





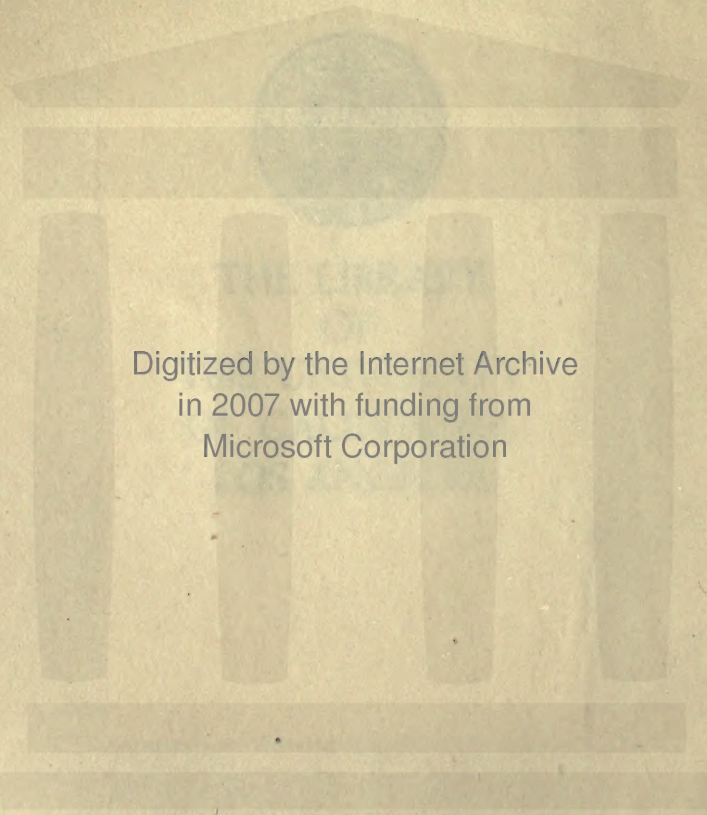
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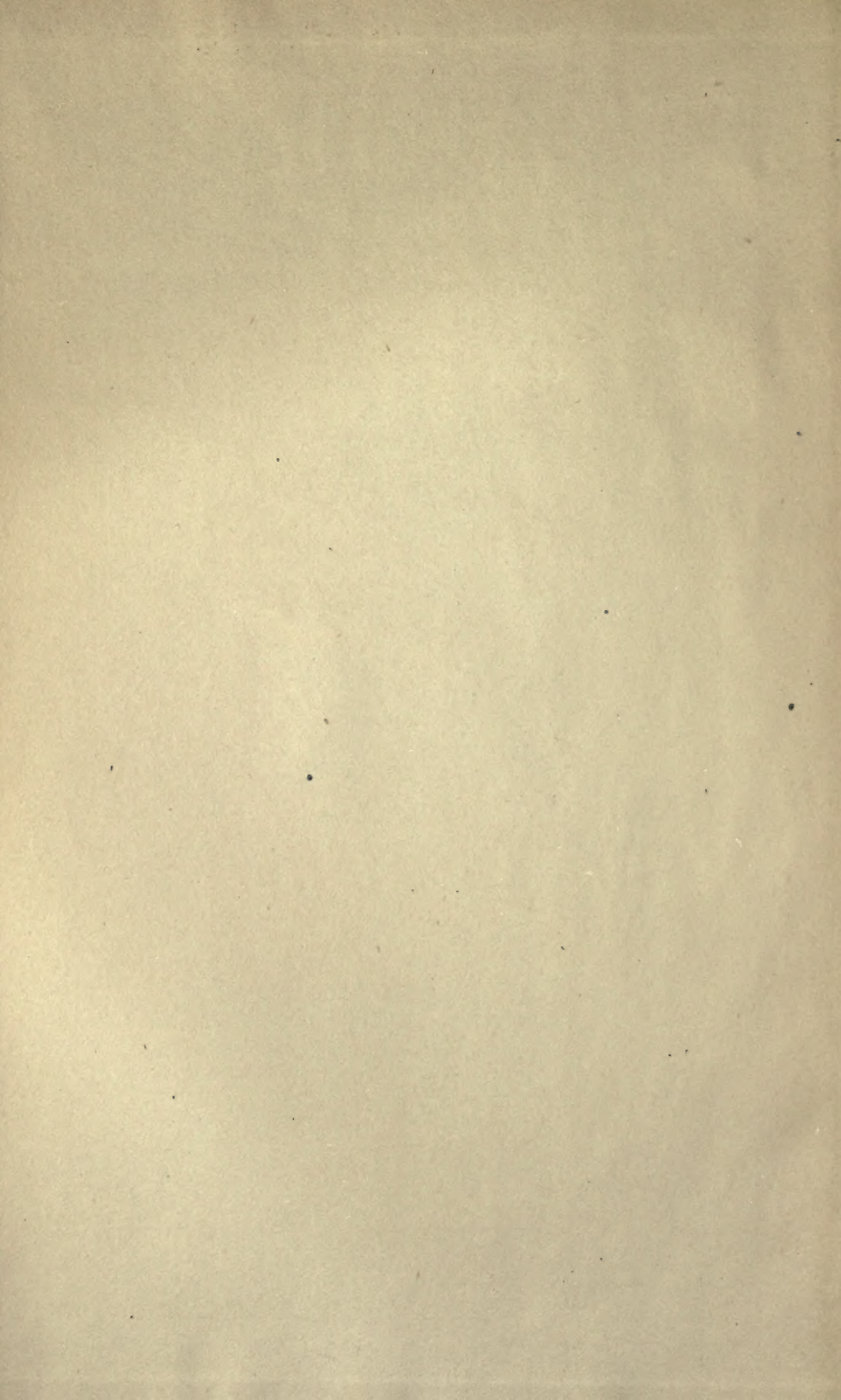


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61ST CONGRESS : : 3D SESSION

DECEMBER 5, 1910-MARCH 4, 1911

PROCEEDINGS  
SENATE DOCUMENTS

North Atlantic Coast Fisheries

Arbitration

THE PERMANENT COURT OF ARBITRATION  
AT THE HAGUE

UNDER THE PROVISIONS OF THE GENERAL TREATY OF  
ARBITRATION, 17 APRIL 1, 1907, AND THE SPECIAL  
AGREEMENT OF JANUARY 27, 1908, BETWEEN  
THE UNITED STATES OF AMERICA  
AND GREAT BRITAIN

VOL. 73

(IN TWELVE VOLUMES)  
VOLUME III





NORTH ATLANTIC COAST FISHERIES

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PROCEEDINGS

IN THE

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(IN TWELVE VOLUMES)

VOLUME III

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UNDER THE

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PERIOD FROM 1871 TO 1905.

*Earl of Kimberley to Lord Lisgar.*

DOWNING STREET, 17th June, 1871.

MY LORD,—I have the honor to enclose, herewith, copies of the Treaty signed at Washington, on May 8th, by the Joint High Commissioners, which has been ratified by Her Majesty and by the President of the United States, and of the Instructions to Her Majesty's High Commissioners and Protocols of the Conferences held by the Commission. The Dominion is, from its geographical position as the immediate neighbor of the United States, so peculiarly interested in the maintenance of cordial relations between that Republic and the British Empire, that it must be a source of satisfaction to the Canadian Government, that Her Majesty has been able to conclude a Treaty for the amicable settlement of differences which might have seriously endangered the good understanding between the two countries.

Moreover, the Rules laid down in Article VI, as to the international duties of neutral governments are of special importance to the Dominion which carries on such an extensive and increasing maritime commerce, and possesses such a considerable merchant navy.

But independently of the advantages which Canada must derive from the removal of the causes of difference with the United States, arising out of occurrences during the civil war, Her Majesty's Government believe that the settlement which has been arrived at of the questions directly affecting British North America, cannot fail to be beneficial to the Dominion. I need not refer to the well known history of the Fishery question, further than to observe that ever since the termination, by the British Government in consequence of the war of 1812, of the liberty enjoyed under the Treaty of 1783, by American citizens of fishing in the territorial waters of the British Colonies, and the renunciation by the United States, in the Treaty of 1818, of all claim to that liberty, this question has in different forms been the subject of controversy with the United States. Her Majesty's Government have always contended for the rights of the Colonies, and they have employed the British Naval forces in the protection of the Colonial fisheries; but they could not overlook the angry feelings to which this controversy has given rise, and the constant risk that in the enforcement of the exclusion of American fishermen from the Colonial waters a collision might take place which might lead to the most serious consequences, and they would have been wanting in their duty, if they had not availed themselves of the opportunity presented by the late negotiation to remove a cause of



perpetual irritation and danger to the relations of this country and the Dominion with the United States.

The Canadian Government itself took the initiative in suggesting that a Joint British and American Commission should be appointed, with a view to settle the disputes which had arisen as to the interpretation of the Treaty of 1818, but it was certain that however desirable it might be, in default of any complete settlement, to appoint such a Commission, the causes of the difficulty lay deeper than any question of interpretation, and the mere discussion of such points as the correct definition of bays could not lead to a really friendly agreement with the United States. It was necessary, therefore, to endeavor to find an equivalent which the United States might be willing to give in return for the fishery privileges, and which Great Britain, having regard both to Imperial and Colonial interests, could properly accept. Her Majesty's Government are well aware that the arrangement which would have been most agreeable to Canada was the conclusion of a Treaty similar to the Reciprocity Treaty of 1854, and a proposal to this effect was pressed upon the United States Commissioners, as you will find in the 36th Protocol of the Conferences. This proposal was, however, declined, the United States Commissioners stating "that they could hold out no hope that the Congress of the United States would give its consent to such a tariff arrangement as was proposed, or to any extended plan of reciprocal free admission of the products of the two countries." The United States Commissioners did indeed propose that coal, salt and fish, should be reciprocally admitted free, and lumber after the 1st of July 1874; but it is evident that looked at as a tariff arrangement this was a most inadequate offer, as will be seen at once when it is compared with the long list of articles admitted free under the Reciprocity Treaty. Moreover, it is obvious from the frank avowal of the United States Commissioners, that they only made this offer because one branch of Congress had recently more than once expressed itself in favor of the abolition of duties on coal and salt, and because Congress had partially removed the duty from lumber, and the tendency of legislation in the United States was towards the reduction of taxation and of duties, so that to have ceded the Fishery rights in return for these concessions would have been to exchange them for commercial arrangements, which there is reason to believe may before long be made without any such cession, to the mutual advantage of both the Dominion and the United States; and Her Majesty's Government are bound to add that whilst in deference to the strong wishes of the Dominion Government they used their best efforts to obtain a renewal in principle of the Reciprocity Treaty, they are convinced that the establishment of free trade between the Dominion and the United States is not likely to be promoted by making admission to the fisheries dependent upon the conclusion of such a Treaty; and that the repeal by Congress of duties upon Canadian produce on the ground that a Protective Tariff is injurious to the country which imposes it, would place the commercial relations of the two countries on a far more secure and lasting basis than the stipulations of a Convention framed upon a system of reciprocity. Looking, therefore, to all the circumstances, Her Majesty's Government found it their duty to deal

separately with the Fisheries, and to endeavor to find some other equivalent; and the reciprocal concession of free fishery with free import of fish and fish oil, together with the payment of such a sum of money as may fairly represent the excess of value of the Colonial over the American concession, seems to them to be an equitable solution of the difficulty. It is perfectly true that the right of fishery on the United States coasts, conceded under Article XIX, is far less valuable than the right of fishery in Colonial waters, conceded under Article XVIII, to the United States, but on the other hand, it cannot be denied that it is most important to the Colonial fishermen to obtain free access to the American market for their fish and for fish oil, and the balance of advantage on the side of the United States will be duly redressed by the Arbitrators under Article XXII. In some respects a direct money payment is perhaps a more distinct recognition of the rights of the Colonies than a tariff concession, and there does not seem to be any difference in principle between the admission of American fishermen for a term of years in consideration of the payment of a sum of money in gross, and their admission under the system of Licenses, calculated at so many dollars per ton, which was adopted by the Colonial Government for several years after the termination of the Reciprocity Treaty. In the latter case, it must be observed, the use of the Fisheries was granted without any tariff concession whatever on the part of the United States, even as to the importation of fish.

Canada could not reasonably expect that this country should, for an indefinite period, incur the constant risk of serious misunderstanding with the United States; imperilling, perhaps, the peace of the whole Empire, in order to endeavor to force the American Government to change its commercial policy; and Her Majesty's Government are confident that, when the Treaty is considered as a whole, the Canadian people will see that their interests have been carefully borne in mind, and that the advantages, which they will derive from its provisions, are commensurate with the concessions which they are called upon to make. There cannot be a question as to the great importance to Canada of the right to convey goods in bond through the United States, which has been secured to her by Article XXIX; and the free navigation of Lake Michigan, under Article XXVIII, and the power of transshipping goods, under Article XXX, are valuable privileges which must not be overlooked in forming an estimate of the advantages which Canada will obtain. Her Majesty's Government have no doubt that the Canadian Government will readily secure to the citizens of the United States, in accordance with Article XXVII, the use of the Canadian Canals, as, by the liberal policy of the Dominion, those canals are already opened to them on equal terms with British subjects; and they would urge upon the Dominion Parliament and the Legislature of New Brunswick, that it will be most advisable to make the arrangement as to duties on lumber floated down the St. John River, upon which the execution of Article XXX as to the transshipment of goods, is made contingent.

The freedom to navigate the St. Lawrence, which is assured to the United States by Article XXVI, has long existed in fact, and its recognition by Treaty cannot be prejudicial to the Dominion, which



moreover, obtains in return, the free use of certain rivers on the Pacific side of the Continent.

I must not omit to notice that, by Article XXXIV., the dispute as to the Island of St. Juan, is to be submitted to arbitration; and provision has thus happily been made for the amicable termination of a long-standing and difficult controversy at a time when, in consequence of the union of British Columbia with the Dominion, this boundary question has become matter of interest to the whole Confederation of British Provinces.

I have thus gone through those parts of the Treaty which immediately touch the Dominion; but a question of much moment remains as to the course which should be taken during the present fishing season, pending the enactment by the respective Legislatures of the laws necessary to bring the Fishery Articles into operation.

I find that on the conclusion of the Reciprocity Treaty, in June, 1854, and previous to its ratification, the then American Secretary of State (Mr. Marcy) expressed the hope of his Government that American Fishermen would not be molested if they should at once attempt to use the privileges granted by that Treaty. A despatch was therefore addressed to the Governor of the North American Colonies, recommending that the wish of the United States Government should be acceded to, and that the American fishermen should be immediately admitted to the Colonial fisheries. The result was that the various Colonial Governments at once admitted the American fishermen to the fisheries, although the Legislative Acts necessary to give effect to the Treaty were not passed till late in the autumn. It is evidently most desirable that a similar course should be pursued on the present occasion; and you will perceive from the notes which have passed between Sir E. Thornton and Mr. Fish, copies of which I enclose, that the United States Government have made an application similar to that which they made in 1854; and that Her Majesty's Government have engaged to recommend to the Colonial Governments that it should be acceded to. Her Majesty's Government are of course aware that the Colonial Governments have no power to set aside the fishery statutes by their own authority; but it is entirely within their power to take no active steps to enforce those statutes and to suspend the instructions to the Colonial Cruisers to exclude American citizens from the fisheries, just as it is in the power of Her Majesty's Government to suspend the action of Her Majesty's Cruisers, although the Imperial Fishery Statute is still in force.

Her Majesty's Government have no desire whatever to attempt to interfere with the entire right of the Colonial Legislatures to refuse to pass the acts necessary to give effect to the Treaty, though they would deeply deplore that a course which they believe would be most impolitic should be taken; but, on the other hand, they have too much confidence in the wisdom of those free Assemblies, to anticipate any such result; and they are confident that the Canadian Government would be as desirous as Her Majesty's Government that no untoward collision should occur during the present season which might prejudice the fair consideration of the Treaty, both by the American Congress and the Colonial Parliaments; and that, on a full consideration of the circumstances, they will see that the responsibility of incurring



the risk of such a collision would be far heavier than that of removing, so far as they have the power, the obstacles to the provisional enjoyment by American citizens of the privileges which it is intended by the Treaty to secure to them for a longer time.

I cannot conclude this despatch without expressing the gratification which it has given Her Majesty's Government to have had the valuable assistance of Sir J. Macdonald, in the negotiation of this Treaty. Whatever view may be taken in Canada of the merits of the Treaty, it must be an unqualified cause of satisfaction to the Canadians to know that they were represented by a Statesman holding so distinguished a position in the Canadian Government, and so well able, from his knowledge and experience, to put forward with the greatest force and authority the arguments best suited to promote the claims and interests of the Dominion.

I have, etc.

(Signed) KIMBERLEY.

Governor-General The Right-Honorable LORD LISGAR,  
G. C. B., etc., etc., etc.

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*Mr. Fish to Sir Edward Thornton.*

DEPARTMENT OF STATE,  
Washington, June 24, 1871.

SIR: Much anxiety is expressed and made known to this Department on the part of those concerned in the mackerel fishery near the coasts of the British provinces, the season for which is about to open. Though aware that they cannot yet technically claim the privileges and immunities promised to them in the treaty of Washington, they were in hopes that, through the forbearance of Her Majesty's authorities and those of the colonies, they might no longer be subjected to the annoyances to which they have hitherto been liable. You are aware that I have had reason to share in those hopes. Believing, as I firmly do, that if they should be disappointed, much irritation would be occasioned, which it is desirable should be avoided, and apprehending that the legislation on the part of the United States, stipulated for in the treaty, might otherwise at least be retarded, I pray you again to move the respective imperial or colonial authorities, that nothing practicable or reasonable may be omitted which might tend to the result desired.

If you should think favorably of this request, you will pardon me for adding that it is highly important that it should be complied with as soon as may be convenient.

I have, &c.

HAMILTON FISH.

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*Sir Edward Thornton to Mr. Fish.*

WASHINGTON, June 26, 1871.

SIR: I have the honor to acknowledge the receipt of your note of the 24th instant, and to assure you that as far as the action of Her

Majesty's naval officers or of those of the Canadian government is concerned, there is no cause for anxiety to citizens of the United States engaged in the fisheries in the neighborhood of the British provinces, so long as they may respect the laws upon the subject now in force. The tenor of the instructions issued to those officers both by Her Majesty's government and by that of the Dominion are of the most liberal nature, and though they continue to hold the opinion that under the treaty of 1818 United States fishermen are prohibited from frequenting colonial ports and harbors for any other purposes but for shelter, repairing damages, purchasing wood, and obtaining water, such prohibition will not be enforced during the present season, and they will be allowed to enter Canadian ports for the purposes of trade, and of transshipping fish and procuring supplies, nor will they be prevented from fishing outside of the three-mile limit in bays the mouth of which is more than six miles wide.

It is to be hoped, however, that citizens of the United States will, on their part, contribute to the prevention of untimely collisions, by refraining from encroaching, for the purpose of fishing, upon those waters from which, by the treaty of 1818 and by the laws of Great Britain and Canada, they are excluded, until the legislation for insuring to them the privileges and immunities agreed upon by the treaty of the 8th ultimo shall have been carried out.

I have the honor, &c.

EDW. THORNTON.

*Mr. Pakenham to Mr. Davis.*

WASHINGTON, *July 26, 1871.*

(Received July 27.)

SIR: I have the honor to inform you that intelligence has reached me from the lieutenant governor of Prince Edward Island, to the effect that the government yesterday decided not to enforce the fishery laws during the present season, and pending the consideration of the treaty by the legislature of that portion of Her Majesty's dominions.

I have the honor, &c.

F. J. PAKENHAM.

*Mr. Davis to Mr. Pakenham.*

DEPARTMENT OF STATE,

*Washington, August 9, 1871.*

MY DEAR MR. PAKENHAM: Dennis C. Murphy, master of the *Lizzie A. Tarr*, of Gloucester, has stated, under oath, facts in regard to the action of Her Majesty's naval officers toward him on the Newfoundland coast which lead me to apprehend that they are not acting in accordance with wishes and instructions of Her Majesty's government, so far as we are able to judge of those wishes and instructions from the correspondence which has taken place since the conclusion of the treaty of Washington.



The facts stated are that, on the 7th of June last, the *Lizzie A. Tarr*, being bound on a fishing voyage to the Banks, entered Lambley Harbor, Grand Jarvis, Newfoundland, to buy bait. She was boarded by a boat from the British war steamer *Danae*, and was ordered to leave, and refused the privilege of purchasing fresh bait. Captain Murphy inquired as to the authority of such action, but got no reply. He avers that when the British officers tripped the seine then in the hands of English fishermen, and let out the herring, so that no bait could be sold, saying to the fishermen, "What are you doing? If I catch you selling bait to Yankees I will cut up your seine. Where are you to get bread next winter?" Captain Murphy then left the harbor, but as the wind began to blow and rain commenced, he went back for shelter. A boat from the *Danae* was lying in wait for him. The officers came on board and showed him a written order from the captain to seize the *Lizzie A. Tarr*, against which Murphy protested, claiming the right of shelter, but was required to agree in writing to go out at daylight. Murphy declares that this action caused a delay of three weeks, and a loss to all concerned of not less than \$2,000.

I would be glad if you would bring the case to the attention of the proper authorities, with a view to the adoption of a more friendly and hospitable treatment of our fishermen, if such conduct shall prove to have been manifested as is reported by Captain Murphy.

Faithfully, yours,

J. C. B. DAVIS,  
*Acting Secretary.*

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*Mr. Evarts to Mr. Welsh.*

No. 33.]

DEPARTMENT OF STATE,  
Washington, March 2, 1878.

SIR: Complaints have reached the department of serious interference with American fishermen engaged during the present season in the herring fishery on the coast of Newfoundland, especially in the neighborhood of Long Harbor. The complaints come through various sources; first, from the United States consuls in that province; the consuls confining themselves, however, to general statements, based on representations made to them by fishermen immediately affected at the time of the occurrences, which form the grounds of complaints. Still more recently, however, these complaints have been preferred in a more specific manner, supported by affidavits of the masters of several fishing vessels owned and fitted out at Gloucester, Mass. From these statements it appears that about the 6th of January last no less than eight schooners from the above-named port, while engaged in the herring fishery at and in the neighborhood of Long Harbor, were attacked by the inhabitants to the number in one instance of 60 men, and in another 200 or more, and their seines, which were set and in most cases full of fish, cut and destroyed, and the fish, in one case to the amount of 5,000 barrels, and in others only less in quantity and value, scattered and run out to sea, resulting, beside the great loss of property, in the vessels being obliged to return to their home port in ballast, and also to abandon their fishing enterprise for the season.



When it is remembered at what considerable expense the preparations are made for a season's fishing in these northern latitudes, and that very many of the men, both masters and mariners, embark their all in the enterprise, the serious character of these losses may be partially understood.

Instructions have been sent to the consuls to transmit fuller information on the subject, and this will be furnished you as soon as it shall have been received. In the mean time it is deemed advisable to instruct you to bring the matter to the attention of Her Majesty's Government, and to request that it will cause an investigation to be made into the alleged facts of the case, and to adopt such measures as may be found necessary, not only to put an end to the evil, but also to prevent a recurrence of acts which, in addition to the injuries and losses to individuals, may have a tendency to complicate the good relations which so happily subsist between this government and that of Her Britannic Majesty.

I am, &c.,

W. M. EVARTS.

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*Mr. Welsh to Earl of Derby.*

LEGATION OF THE UNITED STATES,  
*London, March 19, 1878.*

MY LORD: I have the honor to acquaint your lordship that complaints have reached the Department of State at Washington of serious interference with American fishermen engaged during the present season in the herring fishery on the coast of Newfoundland, especially in the neighborhood of Long Harbor. The complaints come from various sources: first, from the United States consuls in that province; the consuls confining themselves, however, to general statements based on representations made to them by fishermen immediately affected at the time of the occurrences which form the grounds of the complaints. Still more recently, however, these complaints have been preferred in a more specific manner, supported by affidavits of the masters of several fishing vessels owned and fitted out at Gloucester, Mass.

From these statements it appears that, about the 6th of January last, no less than eight schooners from the above-named port, while engaged in the herring fishery at and in the neighborhood of Long Harbor, were attacked by the inhabitants to the number in one instance of 60 men, and in another 200 or more, and their seines, which were set, and in most cases full of fish, cut and destroyed, and the fish in one case to the amount of 5,000 barrels, and in others only less in quantity and value, scattered and run out to sea, resulting, besides the great loss of property, in the vessels being obliged to return to their home port in ballast, and also to abandon their fishing enterprise for the season.

When it is remembered at what considerable expense the preparations are made for a season's fishing in these northern latitudes, and that very many of the men, both masters and mariners, embark their all in the enterprise, the serious character of these losses may be partially understood.

Instructions have been sent to the consuls to transmit fuller information on the subject, and I am advised that this will be furnished to me so soon it shall have been received by the Department of State.

In the mean time, I am instructed to bring the matter to the attention of Her Majesty's Government, and to request that it will cause an investigation to be made into the alleged facts of the case, and adopt such measures as may be found necessary not only to put an end to the evil, but also to prevent a recurrence of acts which, in addition to the injuries and losses by individuals, may have a tendency to complicate the good relations which so happily subsist between the Government of the United States and that of her Britannic Majesty.

I have, &c.

JOHN WELSH.

*Lord Derby to Mr. Welsh.*

FOREIGN OFFICE, *March 25, 1878.*

SIR: I have the honor to acknowledge the receipt of your letter of the 19th instant, stating that you have been instructed by your government to make a representation to Her Majesty's Government relative to the differences which have arisen between British and United States fishermen on the coast of Newfoundland, and I have to inform you in reply, that the matter shall receive due consideration.

I have, &c.,

DERBY.

*Mr. F. W. Seward to Mr. Welsh.*

No. 55.]

DEPARTMENT OF STATE,  
*Washington, April 6, 1878.*

SIR: Referring to instruction No. 33, addressed to you by this department, under date of 2d March last, in relation to the alleged interference by the inhabitants of Long Harbor, Newfoundland, with certain Americans engaged in the herring fishery there, I now inclose for your information, copies of further evidence in the matter, taken at St. John's, which has been received from the consul of the United States at that place.

I am, &c.,

F. W. SEWARD,  
*Acting Secretary.*

*Mr. Evarts to Mr. Welsh.*

No. 67.]

DEPARTMENT OF STATE,  
*Washington, April 26, 1878.*

SIR: Referring to the instruction formerly addressed to you in relation to the interference, by certain fishermen of Newfoundland, with Americans engaged in the herring fishery at Fortune Bay, during the past winter, I now inclose for your further information, a copy of a



dispatch of the 2d instant, No. 66, on the subject, from the commercial agent of the United States at St. Pierre, Miquelon.

I am, &c.,

WM. M. EVARTS.

[Inclosure.]

*Mr. McLaughlin to Mr. Seward.*

No. 66.]

COMMERCIAL AGENCY, U. S. A.,  
*St. Pierre, Miquelon, April 2, 1878.*

SIR: I have the honor to acknowledge receipt of your dispatch (No. 49) under date 21st February, from which I learn that a report has been made to the Department of State to the effect that a number of American vessels had been obliged to leave Fortune Bay on account of the antagonism of the fishermen in that bay, who "cut their cables and set their vessels adrift;" and further, that "some fourteen or more vessels (American) had been compelled by the natives to retire from the bay" without their cargoes, and that "Captain Jacobs, of schooner *Moses Adams*, had been compelled to defend himself and vessel from the assaults which were made upon him."

I beg, very respectfully, to observe that Long Harbor in Fortune Bay, the locality in which the difficulties occurred, is distant from St. Pierre about 90 miles, and that during the winter months there is almost a complete cessation of communication between that harbor and St. Pierre, and that no intimation of the matters alluded to in your dispatch came to my knowledge until through the Newfoundland and Nova Scotian journals, long after the difficulties occurred, which will account for my not having made it my duty to report to the Department on the subject.

Since the reception of your dispatch, which came to hand on 21st March, I have been enabled to obtain information from several parties, and among others, from an eye-witness to the matter in which Captain Jacobs was an actor, and the following (or as nearly as I can obtain it) is, I believe, reliable information:

On Sunday, January 13, three crews of American schooners, assisted by some Newfoundlanders, put out their seines to haul herring; they all succeeded in getting large quantities in their seines, when the fishermen of the bay (Newfoundlanders) gathered together and went to each of the captains and demanded that they should let the herring go out of their seines, under the pretext that as they (the natives) did not seine on the Sabbath, and as it was contrary to law, they would not allow it to be done by foreigners. The first captain they addressed (Capt. James McDonald, of schooner *F. A. Smith*) acceded to their demands and took up his seine; the second, Captain Jacobs, of schooner *Moses Adams*, had in the meantime run his herring into another seine belonging to a seine-master (Mr. Farroll, of Fortune Bay, who was working with him, and which was moored inside of his own); he took up his own seine into his boat, but refused to let the herring out of the other one. On some threatening language being used by the fishermen, he drew a revolver and declared he would shoot the first man who would seek to injure him or his seine; he finally rowed aboard his schooner, which was moored at a



short distance. The natives then went to Captain Dago, of the schooner *New England*, and demanded that he should trip his seine and let out the herring; this he firmly refused to do. The fishermen then let the herring out and hauled the seine ashore and run it up the beach, tearing and breaking it in pieces.

From what I can learn, the statement that the schooners were obliged to leave the bay on account of the antagonism of the natives, is inexact, as they still continued to try during the week-days with the same seines (except Captain Dago's, which was destroyed) for a fortnight or more after the before-related occurrences without any hindrance whatever on the part of the natives, and it is asserted that it was owing to the exceedingly mild season and consequent impossibility to freeze herring, for which purpose the schooners alluded to were fitted out, that they left without their cargoes, and that considerable herring had been taken from time to time, but after having tried to freeze them, they were repeatedly obliged to sell them to the vessels loading salt-herring. This reason appears to be very likely the correct one, as I can hear no account whatever of any vessels having had their cables cut, or of any other serious difficulty having occurred other than the one alluded to 13th January.

In the winter of 1876-'77 a similar case occurred, one of the American seines being put out on Sunday by the crew, in charge of a Newfoundlander as seine-master, Jeremiah Petites. The people of the bay demanded that the seine should not be hauled, and it was accordingly tripped and taken up by the owners, no further difficulty occurring.

I make these observations in order to show as fully as possible the probably real state of the matter, and under the impression from all I can hear that the reports made to the department, and as related in your dispatch, are more or less incorrect. I think there exists a very decided feeling of hostility on the part of the Newfoundlanders to the use of the large seines by American fishermen in their waters, but have no reason to believe that any action has ever been taken to prevent their hauling or to injure them in any way, except when hauling on Sunday; at the same time it is quite probable that they have seized on the occasion thus offered to show their dislike to seines being used by Americans in competition with their own.

I have the honor to be, sir, very respectfully, etc.,

W. F. McLAUGHLIN,  
*Vice Commercial Agent, United States of America.*

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*Lord Salisbury to Mr. Hoppin.*

FOREIGN OFFICE, May 3, 1878.

SIR: I referred to Her Majesty's secretary of state for the colonies Mr. Welsh's letter of the 19th of March, upon the subject of the disputes which had taken place between British and United States fishermen on the coast of Newfoundland, and I have the honor to acquaint you that I am informed that inquiries are being instituted into the matter both by the authorities of Newfoundland and by the senior

naval officer on the station, on learning the result of which I shall have the honor of addressing a further communication to you.

I have, &c.,

SALISBURY.

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*Mr. F. W. Seward to Mr. Welsh.*

No. 125.]

DEPARTMENT OF STATE,  
*Washington, August 13, 1878.*

SIR: Referring to Mr. Hoppin's dispatch No. 5, of the 4th of May last, in regard to the interference by certain inhabitants of the coast of Newfoundland with American fishermen, in which it was stated that an investigation was being made into the matter by the colonial authorities, and that the result thereof would be communicated to the legation, I desired to be informed, in the absence of further intelligence from you upon the subject, whether you have received any additional particulars from the British Government. If not, you are instructed to request Her Majesty's Government to advise you of the progress of the inquiry. You will transmit whatever information may be obtained to the Department.

I am, &c.,

F. W. SEWARD,  
*Acting Secretary.*

---

*Lord Salisbury to Mr. Welsh.*

FOREIGN OFFICE, *August 23, 1878.*

SIR: Her Majesty's Government have had under their consideration your letter of the 19th of March, making representations relative to certain disturbances which occurred in January last, between British and United States fishermen at Fortune Bay, on the coast of Newfoundland, and requesting, in accordance with the instructions of your government, that an investigation might be made into the alleged facts of the case; and I have now the honor to transmit to you, for your information and for communication to your government, the accompanying copy of a report drawn up by Captain Sulivan, R. N., of Her Majesty's ship *Sirius*, the officer intrusted with the duty of instituting an inquiry into the matter on the spot.

You will perceive that the report in question appears to demonstrate conclusively that the United States fishermen on this occasion had committed three distinct breaches of the law, and that no violence was used by the Newfoundland fishermen except in the case of one vessel whose master refused to comply with the request which was made to him that he should desist from fishing on Sunday, in violation of the law of the colony, and of the local custom, and who threatened the Newfoundland fishermen with a revolver, as detailed in paragraphs five and six of Captain Sulivan's report.

I have the honor to be, &c.,

SALISBURY.



[Appendix.]

*Report on the differences that arose between British and United States fishermen in January, 1878, by Capt. George Lydiaard Sullivan, of her Majesty's ship Sirius.*

Having carefully weighed the evidence given on oath before me by Newfoundland fishermen present at the time, together with that inclosed in the correspondence forwarded for my perusal, I am of opinion—

1. That the Americans were using seines for catching herring on the 6th of January, 1878, in direct violation of Title XXVII, chapter 102, section 1, of the consolidated statutes of Newfoundland, viz: "No person shall haul or take herring by or in a seine or other such contrivance on or near any part of the coast of this colony or of its dependencies, or in any of the bays, harbors, or other places therein, at any time between the 20th day of October and the 25th day of April."

2. That the American captains were setting and putting out seines and hauling and taking herring on Sunday, the 6th January, in direct violation of section 4, chap. 7, of the act passed 26th April, 1876, entitled "An act to amend the law relating to the coast fisheries," viz: "No person shall, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, haul or take any herring, caplin, or squib with net, seines, bunts, or any such contrivance for the purposes of such hauling or taking."

3. That they were barring fish in direct violation of the continuance of the same act, Title XXVII, chap. 102, section 1, of the consolidated statutes of Newfoundland, "or at any time use a seine or other contrivance for the catching or taking of herrings, except by way of shooting and forthwith hauling the same."

4. That, contrary to the terms of the Treaty of Washington, in which it is expressly provided that they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose (see article 18 of the above-named treaty), they were fishing illegally, interfering with the rights of British fishermen and their peaceable use of that part of the coast then occupied by them, and of which they were actually in possession—their seines and boats, their huts, gardens, and land granted by government being situated thereon.

5. It is distinctly shown in the evidence that the cause of the difference commenced with the Americans by their persisting in shooting their seines on the Sunday, as the Englishmen who worked for them would not do it on that day, not only on account of its being illegal, but of their religious regard for the Sabbath, which is always strictly kept by them, and, although it must be observed that the result of this illegal fishing would have been that the Americans would have secured the whole of the herring in the bay on that day, to the exclusion of the rights and fair chances of all the others during the week, yet there is no evidence to prove that this or anything else



but the fact of its being Sunday and the law and custom among themselves regarding it prompted them to demand that the seines should be withdrawn.

6. It is shown by the evidence of all those witnesses present at the time when the Americans were remonstrated with, and told to take their seines up prior to any serious steps being taken, and it is also distinctly proved that no violence was resorted to until after the exasperating conduct of Captain Jacobs, the American master of a schooner concerned in this illegal fishing, who threatened them with a revolver if they prevented him or interfered with his seine.

7. It does not appear that the native fishermen were aware of the illegality of hauling a seine in the month of January. It is, therefore, to be presumed that the Americans were also ignorant of that law, although their ignorance can not exonerate them from the breach, nor does it exonerate John Hickey, an Englishman, who is charged with the same offense, and whom it is my intention to summon before me to answer to that charge.

8. The statement of the Americans that they were compelled to leave the harbor and leave off fishing is entirely without foundation, which is proved by the evidence of those examined before me, among whom was Mr. Snellgrove, collector of customs, who was there a week after the occurrence, and communicated with them, and by the evidence of others to the effect that they remained for about a fortnight or more "until the herring slacked," and, with respect to their loss of the haul of herring by the seine being emptied, the fish were not their lawful property, having been illegally caught.

In support of this view of the conduct of the Americans, I am not only borne out by the evidence of the Fortune Bay fishermen, who made their statements in a remarkably frank and straightforward manner, but by the self-conflicting evidence of those very Americans themselves, whose depositions given on oath show them to have been illegally fishing, and who were liable thereby to the forfeiture of their seines, nets, &c., by chap. 102, section 12, of the consolidated statutes.

GEORGE L. SULLIVAN,  
*Captain and Senior Officer.*

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*Mr. Evarts to Mr. Welsh.*

No. 150.]

DEPARTMENT OF STATE,  
*Washington, September 28, 1878.*

SIR: I received in due course your dispatch of August 24 ultimo, inclosing Lord Salisbury's reply of the British Government to the representations that had been made to it as early as March last by you, under instructions from the Department.

I must understand Lord Salisbury's note, accompanying the copy of Captain Sullivan's report, which he communicates to this government, as adopting that naval officer's conclusions of fact respecting the violent injuries which our fishing-fleet suffered at the hands of the

Newfoundland fishing population at Fortune Bay, in January of this year, as the answer which Her Majesty's Government makes to the representations laid before it on our part, verified by the sworn statements of numerous and respectable witnesses.

His lordship has not placed in our possession the proofs or depositions which form the basis of Captain Sullivan's conclusions of fact, and I am unable, therefore, to say whether, upon their consideration, the view which this government takes of these transactions, upon the sworn statements of our own respectable citizens, would be at all modified. In the absence of these means of correcting any mistakes or false impressions which our informants may have fallen into in their narrative of the facts, it is impossible to accept Captain Sullivan's judgment upon undisclosed evidence as possessing judicial weight.

You will, therefore, lay before Her Majesty's Government the desire which this government feels to be able to give due weight to this opposing evidence, before insisting upon the very grave view of these injuries which, at present, its unquestionable duty to the interests which have suffered them, and its confidence in the competency and sobriety of the proofs in our possession, compels this government to take. Should Her Majesty's Government place a copy of the evidence upon which Captain Sullivan bases his report in your hands, you will lose no time in transmitting it for consideration. I regret that any further delay should thus intervene to prevent an immediate consideration of the *facts* in the matter by the two governments in the presence of the same evidence of those facts for their scrutiny and judgment.

But a careful attention to Lord Salisbury's note discovers what must be regarded as an expression of his views, at least, of the authority of provincial legislation and administrative jurisdiction over our fishermen within the three-mile line, and of the restrictive limitations upon their rights on these fishing-grounds under the Treaty of Washington. Upon any aspect of the evidence, on one side and the other, as qualifying the violent acts from which our fishing-fleet has suffered at the hands of the Newfoundland coast-fishermen, the views thus intimated seem to this Government wholly inadmissible, and do not permit the least delay on our part in frankly stating the grounds of our exception to them.

The report of Captain Sullivan presents, as a justificatory support of the action of the Newfoundland shore-fishermen, in breaking up the operations of our fishing-fleet inside the three-mile line, at the times covered by these transactions, the violation of certain municipal legislation of the Newfoundland Government which, it is alleged, our fishermen were in the act of committing when the violent interruption of their industry occurred. I do not stop to point out the serious distinction between the official and judicial execution of any such laws and the orderly enforcement of their penalties after solemn trial of the right, and the rage and predominant force of a volunteer multitude driving off our peaceful occupants of these fishing grounds pursuing their industry under a claim of right secured to them by



treaty. I reserve this matter for a complete examination when the conflicting proofs are in my possession.

I shall assume, for my present purpose, that the *manner* of exerting this supposed provincial authority was official, judicial, and unexceptional.

I will state these justifications for the disturbance of our fishing-fleet in Captain Sullivan's own language, that I may not even inadvertently impute to Lord Salisbury's apparent adoption of them any greater significance than their very language fairly imports.

Captain Sullivan assigns the following violations of law by our fishermen as the grounds of rightful interference with them on the occasion in question:

"1st. That the Americans were using seines for catching herring on the 6th of January, 1878, in direct violation of Title XXVII, chapter 102, section 1, of the consolidated statutes of Newfoundland, viz: 'No person shall haul or take herring by or in a seine or other such contrivance on or near any part of the coast of this colony or of its dependencies, or in any of the bays, harbors, or other places therein, at any time between the 20th day of October and the 25th day of April.'

"2d. That the American captains were setting and putting out seines and hauling and taking herring on Sunday, the 6th January, in direct violation of section 4, chapter 7, of the act passed 26th April, 1876, entitled 'An act to amend the law relating to the coast fisheries,' viz: 'No person shall, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, haul or take any herring, caplin, or squid, with net, seines, bunts, or any such contrivance for the purpose of such hauling or taking.'

"3d. That they were barring fish in direct violation of the continuance of the same act, Title XXVII, chapter 102, section 1, of the consolidated statutes of Newfoundland, 'or at any time use a seine or other contrivance for the catching or taking of herrings, except by way of shooting and forthwith hauling the same.'

"4th. That contrary to the terms of the Treaty of Washington, in which it is expressly provided that they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coasts in their occupancy for the same purpose (see Article XVIII, of the above-named treaty), they were fishing illegally, interfering with the rights of British fishermen and their peaceable use of that part of the coast then occupied by them, and of which they were actually in possession—their seines and boats, their huts, gardens, and land granted by government being situated thereon."

The facts which enter into the offenses imputed under the first, second, and third heads of Captain Sullivan's statement, and such offenses thus made out, would seem to be the only warrant for his conclusion under his fourth head, that the United States fishermen have exceeded their treaty right, and in their actual prosecution of their fishing were, when interrupted by the force complained of, interfering with the rights of private property or with British fishermen in the peaceable use of that part of the coast then being in their occupancy for the same purpose, contrary to the proviso of Article XVIII of the Treaty of Washington.



It is no part of my present purpose to point out that this alleged infraction of the reserved rights of the local fishermen does not justify the methods of correction or redress used to drive off our fishermen and break up their prosecution of the fishing. This may be reserved also for discussion when both governments have a fuller knowledge of the actual circumstances of the transaction.

In transmitting to you a copy of Captain Sullivan's report, Lord Salisbury says: "You will perceive that the report in question appears to demonstrate conclusively that the United States fishermen on this occasion had committed three distinct breaches of the law."

In this observation of Lord Salisbury, this government cannot fail to see a necessary implication that Her Majesty's Government conceives that in the prosecution of the right of fishing accorded to the United States by Article XVIII of the treaty our fishermen are subject to the local regulations which govern the coast population of Newfoundland in their prosecution of their fishing industry, whatever those regulations may be, and whether enacted before or since the Treaty of Washington.

The three particulars in which our fishermen are supposed to be constrained by actual legislation of the province cover in principle every degree of regulation of our fishing industry within the three-mile line which can well be conceived. But they are, in themselves, so important and so serious a limitation of the rights secured by the treaty as practically to exclude our fishermen from any profitable pursuit of the right, which, I need not add, is equivalent to annulling or cancelling by the Provincial Government of the privilege accorded by the treaty with the British Government.

If our fishing-fleet is subject to the Sunday laws of Newfoundland, made for the coast population; if it is excluded from the fishing grounds for half the year, from October to April; if our "seines and other contrivances" for catching fish are subject to the regulations of the legislature of Newfoundland, it is not easy to see what firm or valuable measure for the privilege of Article XVIII, as conceded to the United States, this government can promise to its citizens under the guaranty of the treaty.

It would not, under any circumstances, be admissible for one government to subject the persons, the property, and the interests of its fishermen to the unregulated regulation of another government upon the suggestion that such authority will not be oppressively or capriciously exercised, nor would any government accept as an adequate guaranty of the proper exercise of such authority over its citizens by a foreign government, that, presumptively, regulations would be uniform in their operation upon the subjects of both governments in similar case. If there are to be regulations of a common enjoyment, they must be authenticated by a common or joint authority.

But most manifestly the subject of the regulation of the enjoyment of the shore fishery by the resident provincial population, and of the inshore fishery by our fleet of fishing-cruisers, does not tolerate the control of so divergent and competing interests by the domestic legislation of the provinces. Protecting and nursing the domestic interest at the expense of the foreign interest, on the ordinary motives of human conduct, necessarily shape and animate the local

legislation. The evidence before the Halifax Commission makes it obvious that to exclude our fishermen from catching bait, and thus compel them to go without bait, or buy bait at the will and price of the provincial fishermen, is the interest of the local fishermen, and will be the guide and motive of such domestic legislation as is now brought to the notice of this Government.

You will therefore say to Lord Salisbury that this Government can not but express its entire dissent from the view of the subject that his lordship's note seems to indicate. This Government conceives that the fishery rights of the United States, conceded by the Treaty of Washington, are to be exercised wholly free from the restraints and regulations of the statutes of Newfoundland, now set up as authority over our fishermen, and from any other regulations of fishing now in force or that may hereafter be enacted by that government.

It may be said that a just participation in this common fishery by the two parties entitled thereto may, in the common interest of preserving the fishery and preventing conflicts between the fishermen, require regulation by some competent authority. This may be conceded. But should such occasion present itself to the common appreciation of the two Governments, it need not be said that such competent authority can only be found in a joint convention that shall receive the approval of Her Majesty's Government and our own. Until this arrangement shall be consummated, this Government must regard the pretension that the legislation of Newfoundland can regulate our fishermen's enjoyment of the treaty right as striking at the treaty itself.

It asserts an authority on one side, and a submission on the other, which has not been proposed to us by Her Majesty's Government, and has not been accepted by this Government. I can not doubt that Lord Salisbury will agree that the insertion of any such element in the Treaty of Washington would never have been accepted by this Government, if it could reasonably be thought possible that it could have been proposed by Her Majesty's Government. The insertion of any such proposition by construction now is equally at variance with the views of this Government.

The representations made to this Government by the interests of our citizens affected leave no room to doubt that this assertion of authority is as serious and extensive in practical relations as it is in principle. The rude application made to the twenty vessels in Fortune Bay of this asserted authority, in January last, drove them from the profitable prosecution of their projected cruises. By the same reason, the entire inshore fishery is held by us upon the same tenure of dependence upon the parliament of the Dominion or the legislatures of the several Provinces.

I cannot but regret that this vital question has presented itself so unexpectedly to this Government, and at a date so near the period at which this Government, upon a comparison of views with Her Majesty's Government, is to pass upon the conformity of the proceedings of the Halifax Commission with the requirements of the Treaty of Washington. The present question is wholly aside from



the considerations bearing upon that subject, and which furnishes the topic of my recent dispatch.

In the opinion of this Government, it is essential that we should at once invite the attention of Lord Salisbury to the question of provincial control over the fishermen of the United States in their prosecution of the privilege secured to them by the treaty. So grave a question, in its bearing upon the obligations of this Government under the treaty, makes it necessary that the President should ask from Her Majesty's Government a frank avowal or disavowal of the paramount authority of Provincial legislation to regulate the enjoyment by our people of the inshore fishery, which seems to be intimated, if not asserted, in Lord Salisbury's note.

Before the receipt of a reply from Her Majesty's Government, it would be premature to consider what should be the course of this Government should this limitation upon the treaty privileges of the United States be insisted upon by the British Government as their construction of the treaty.

You will communicate this dispatch to Lord Salisbury by reading the same to him and leaving with him a copy.

I am, sir, etc.,

WM. M. EVARTS.

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*The Marquis of Salisbury to Mr. Welsh.*

FOREIGN OFFICE, *November 7, 1878.*

SIR: Her Majesty's Government have had under their consideration the dispatch from Mr. Evarts, dated the 28th September, and communicated to me on the 12th ultimo, respecting the complaints made by the Government of the United States of the injuries sustained by American fishermen in Fortune Bay in January last.

This dispatch is in reply to my letter of the 23d August, in which I forwarded a copy of the report furnished by Captain Sullivan, of Her Majesty's Ship *Sirius*, on the occurrences in question. Mr. Evarts now remarks that the United States Government have not been put in possession of the depositions which form the basis of that report, and are unable, therefore, to say whether, upon their consideration, the view which the Government of the United States takes of these transactions upon the sworn statements of their own citizens would be at all modified.

Her Majesty's Government have not had the opportunity of considering the statements in question; but the depositions which accompanied Captain Sullivan's report, and which I now have the honor to forward, appeared to them, in the absence of other testimony, to be conclusive as regards the facts of the case.

Apart, however, from the facts, in respect to which there appears to be a material divergence between the evidence collected by the United States Government and that collected by the colonial authorities, Mr. Evarts takes exception to my letter of the 23d, on the ground of my statement that the United States fishermen concerned have

been guilty of breaches of the law. From this he infers an opinion on my part that it is competent for a British authority to pass laws, in supersession of the treaty, binding American fishermen within the three-mile limit. In pointing out that the American fishermen had broken the law within the territorial limits of Her Majesty's dominions, I had no intention of inferentially laying down any principles of international law; and no advantage would, I think, be gained by doing so to a greater extent than the facts in question absolutely require.

I hardly believe, however, that Mr. Evarts would in discussion adhere to the broad doctrine which some portion of his language would appear to convey, that no British authority has a right to pass any kind of laws binding Americans who are fishing in British waters; for if that contention be just, the same disability applies *à fortiori* to any other power, and the waters must be delivered over to anarchy. On the other hand, Her Majesty's Government will readily admit—what is, indeed, self-evident—that British sovereignty, as regards those waters, is limited in its scope by the engagements of the treaty of Washington, which cannot be modified or affected by any municipal legislation. I cannot anticipate that with regard to these principles any difference will be found to exist between the views of the two governments.

If, however, it be admitted that the Newfoundland legislature have the right of binding Americans who fish within their waters by any laws which do not contravene existing treaties, it must further be conceded that the duty of determining the existence of any such contravention must be undertaken by the governments, and cannot be remitted to the discretion of each individual fisherman. For such a discretion, if exercised on one side, can hardly be refused on the other. If any American fisherman may violently break a law which he believes to be contrary to a treaty, a Newfoundland fisherman may violently maintain it if he believes it to be in accordance with treaty. As the points in issue are frequently subtle, and require considerable legal knowledge, nothing but confusion and disorder could result from such a mode of deciding the interpretation of the treaty.

Her Majesty's Government prefer the view that the law enacted by the legislature of the country, whatever it may be, ought to be obeyed by natives and foreigners alike who are sojourning within the territorial limits of its jurisdiction; but that if a law has been inadvertently passed which is in any degree or respect at variance with rights conferred on a foreign power by treaty, the correction of a mistake so committed, at the earliest period after its existence shall have been ascertained and recognized, is a matter of international obligation.

It is not explicitly stated in Mr. Evarts's dispatch that he considers any recent acts of the colonial legislature to be inconsistent with the rights acquired by the United States under the treaty of Washington. But if that is the case, Her Majesty's Government will in a friendly spirit consider any representations he may think it right to make upon the subject, with the hope of coming to a satisfactory understanding.

I have, &c.,

SALISBURY.



[Inclosure No. 1.]

*Captain Sullivan to Vice-Admiral Sir E. Inglefield.*

SIRIUS, ST. JOHN'S, NEWFOUNDLAND, *June 19, 1878.*

SIR: I have the honor to inform you that, in obedience to your orders, I left Halifax on Saturday, the 8th instant, and proceeded to Fortune Bay, for the purpose of inquiring into the circumstances connected with the quarrel between the English and American fishermen in Long Harbor in January last, arriving off Brunet Island on the evening of Monday, the 10th. I anchored there for the night, the weather being thick, with fogs gathering; and on the evening of the 11th weighed and proceeded to Long Harbor, at the entrance of which the same afternoon I learnt that the *Pert* was at the head of the harbor (about 9 miles off). I therefore proceeded through the narrows and anchored in 6 fathoms about 7 miles from the entrance, and observed the *Pert* anchored about 3 miles farther in, when I recalled her, and on the following day anchored in company with her 4 miles farther down off Tickle Beach, where we found the disturbance of January last had taken place.

2. On this beach are two huts, occupied by fishermen who witnessed the affair, and having taken their evidence, which, with other evidence subsequently taken, will be forwarded with my report hereafter, we proceeded to Metter's Cove, where a fisherman named Tharnell and another were examined on the same subject.

3. From information given by them I proceeded to St. Jacques the same afternoon, where, from Mr. Snellgrove, subcollector of customs, who was present at Tickle Beach shortly after the disturbance, and others who had witnessed the whole transaction, I obtained further important evidence, which, with my report, will be forwarded at the earliest opportunity when complete.

4. There have been at these places several complaints made to me on various subjects by some of the witnesses, disputes relative to land property, and reports of barring herring, one being that a seine had been laid for this illegal purpose, and had been so for some days; in consequence of which I directed Captain Aitchison to proceed to the spot said to be barred, and ascertain the truth of the information.

5. The *Pert* reported at St. Jacques, and reported having found the seines as described, and taken possession of it. In other cases of complaint, I was only able to take the evidence of those witnesses present at the time, but in the absence of others away fishing, I had to postpone the cases until my return from St. John's.

6. On Monday, the 17th, I directed the *Pert* to proceed to St. John's to coal, prior to her leaving for the east coast, and the same afternoon I left St. Jacques in this ship for St. John's, where I arrived yesterday, at 7 p. m., the mail from England for Halifax arriving a few hours afterward, and leaving early this morning.

7. I am unable to forward more than this letter, as the report on the subject of the American outrage is not complete; but the evidence is most complete, the witnesses corroborating each other, and goes completely to prove the Americans were entirely in the wrong,

and brought the quarrel on themselves, first by illegally fishing, and then by threatening them with a revolver.

8. I found on arrival the *Contest* at anchor, and the *Pert* arrived this morning, to await further orders.

I have, etc.,

GEO. L. SULLIVAN.

[Inclosure No. 2.]

*Captain Sullivan to Rear-Admiral Sir E. Inglefield.*

SIRIUS, ST. JOHN'S, June 21, 1878.

SIR: In obedience to your orders dated the 8th instant, in which I am directed to inquire into the differences which arose between British and United States fishermen in Fortune Bay, in January last, I have the honor herewith to inclose the evidence obtained from several witnesses, together with my report<sup>a</sup> on the subject; and, in further remarking thereon, desire to call your attention to those points in the evidence which have led me to the conclusions contained in that report.

It will be seen therein that there are four statutes which bear on the subject, and which have been infringed by the American fishermen, viz: Act. cap. 6, 1876, in amendment of consolidated statutes (1872): cap. 102, the proviso of the same as regards barring.

By the same act, 1876, sec. 4, and art. 18 of the treaty of Washington—

1. With respect to the first of these, the witness Silas Fudge says: "I witnessed the disturbance at Long Harbor on Sunday, the 6th January last; I am certain it was the 6th; I saw the seines in the water, two of them Americans, again. He (*i. e.*, Jacobs, an American) had his in the boat; he had shot once and discharged his seine into Farrel's, who was working for him."

John Cluett stated that he was in Long Harbor on Sunday in January last. "They (the Americans) commenced hauling herring on Sunday about midday; the first American seine shot was that of Jacobs; there were two more American seines shot. He (Jacobs) had just hauled herring and shot them into Farrel's seine, who was working for him; we remonstrated about breaking the law and fishing Sundays."

All the evidence of the other witnesses is corroborative of the above; and the fact is even acknowledged by the Americans in their own evidence, as appears by the statements inclosed in the correspondence on this subject. It is therefore evident that they were illegally fishing, using seines, and hauling herring in January last contrary to the above-quoted status, which prohibits the same between the 20th October and 25th April in any year.

2. That the American captains were setting and putting out seines and hauling and taking herring on Sunday, the 6th January, in direct violation of sec. 4, cap. 6. This is proved by the evidence of all the witnesses.

<sup>a</sup> For report referred to, see inclosures to Lord Salisbury's note to Mr. Welsh, dated August 23, 1878, *ante*, p. 651.



John Saunders says: "In January last—one Sunday, I don't know the date—the Americans laid out their seines, assisted by the English employed by them; the Newfoundlanders told them to take them up, as it was not legal their fishing on Sundays; there was no other reason for destroying nets but for fishing on Sundays. They went to McCauley, who had laid his seine out for barring herring; the Newfoundlanders said it should not be done on a Sabbath day."

3. That the Americans were barring herring, that is, confining them in the seines for a considerable time, instead of forthwith hauling them. By the evidence of Silas Fudge "He (Captain Jacobs) had shot once and discharged his seine into Tom Farrel's, who was working for him."

John Saunders says: "Jacobs upset his seine into Farrel's seine, who was employed by him. Farrel was barring for the Americans, and was not allowed by Jacobs to haul his seine."

Mark Bolt says: "The Americans do not bar fish; this was the first time I ever knew them to do so."

Richard Hendricken says: "Samuel Jacobs would persist in hauling, and hauled once and barred them in Farrel's net. Farrel was working for them, and had been barring herring for several days, perhaps about a fortnight, by the Americans' orders. I believe it is illegal barring herring, but we have no power to stop it; it is no good telling a magistrate; they take no notice of him."

4. That they were interfering with the rights of British fishermen in their peaceable use of that part of the coast occupied by them, &c. By all the evidence given, it occurred on Tickle Beach, Long Harbor, on which, as was seen by us, was a Newfoundland fishing settlement, the land being granted by government, as stated by Mark Bolt, who says: "I have been in the neighborhood fourteen or fifteen years. The ground I occupy, 150 feet, was granted me for life by government, and for which I now pay a fee; there are two families on the beach; there were three in the winter; our living is dependent on our fishing off this settlement."

The above are the main points in the evidence on which my report is founded.

In conclusion, I beg to inform you that I have forwarded a copy of the report to his Excellency the governor of Newfoundland and the duplicate direct to their lordships, in order to insure their receiving it at the same time as the colonial office will.

I have, &c.,

GEO. L. SULLIVAN.

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*Mr. Evarts to Mr. Welsh.*

No. 347.]

DEPARTMENT OF STATE,  
*Washington, August 1, 1879.*

SIR: You will readily understand that the pressure of current business, especially during the regular and special sessions of Congress, has prevented so immediate attention to the claims of the Fortune Bay fishermen, as definitely laid before me in their proofs completed

during the session, as would enable me to give, in reply, a full consideration to the dispatch of Lord Salisbury of the date of November 7, 1878, in reply to mine to you of 28th September, 1878.

But other and stronger reasons have also induced me to postpone until now any discussion of the questions arising out of the occurrences to which these dispatches referred.

It so happened that the transactions of which certain citizens of the United States complain were brought fully to the attention of the government about the same time at which it became my duty to lay before Her Britannic Majesty's Government the views of the United States Government as to the award then recently made by the Commission on the Fisheries, which had just closed its sittings at Halifax. While the character of the complaint and the interests of the citizens of the United States rendered it necessary that the subject should be submitted to the consideration of Her Britannic Majesty's Government at the earliest possible moment, in order to the prevention of any further and graver misunderstanding and the avoidance of any serious interruption to an important industry, I was exceedingly unwilling that the questions arising under the award and those provoked by the occurrences in Newfoundland should be confused with each other, and least of all would I have been willing that the simultaneous presentment of the views of this Government should be construed as indicating any desire on our part to connect the settlement of these complaints with the satisfaction or abrogation of the Halifax award.

I also deemed it not unadvisable in the interests of such a solution as I am sure is desired by the good sense and good temper of both governments that time should be allowed for the extinguishment of the local irritation both here and in Newfoundland which these transactions seem to have excited, and that another fishing season should more clearly indicate whether the rights to which the citizens of the United States were entitled under the treaty were denied or diminished by the pretensions and acts of the colonial authorities or whether their infraction was accidental and temporary. As soon as the violence to which citizens of the United States had been subjected in Newfoundland was brought to the attention of this department, I instructed you, on 2d March, 1878, to represent the matter to Her Britannic Majesty's Government, and upon such representation you were informed that a prompt investigation would be ordered for the information of that government.

On August 23, 1878, Lord Salisbury conveyed to you, to be transmitted to your Government, the result of that investigation, in the shape of a report from Captain Sullivan, of Her Majesty's ship *Sirius*. In furnishing you with this report, Lord Salisbury, on behalf of Her Britannic Majesty's Government, said:

"You will perceive that the report in question appears to demonstrate conclusively that the United States fishermen on this occasion had committed three distinct breaches of the law, and that no violence was used by the Newfoundland fishermen, except in the case of one vessel, whose master refused to comply with the request which was made to him that he should desist from fishing on Sunday in violation of the law of the colony and of the local custom, and who threat-



ened the Newfoundland fishermen with a revolver, as detailed in paragraphs 5 and 6 of Captain Sullivan's report."

The three breaches of the law thus reported by Captain Sullivan and assumed by Lord Salisbury as conclusively established, were: 1. The use of seines and the use of them also at a time prohibited by a colonial statute. 2. Fishing upon a day—Sunday—forbidden by the same local law; and 3. Barring fish in violation of the same local legislation. In addition Captain Sullivan reported that the United States fishermen were, contrary to the terms of the treaty of Washington—

"Fishing illegally, interfering with the rights of British fishermen and their peaceable use of that part of the coast then occupied by them and of which they were actually in possession—their seines and boats, their huts and gardens and land granted by government being situated thereon."

Yours, containing this dispatch and the accompanying report, was received on 4th September, 1878, and on the 28th of the same month you were instructed that it was impossible for this government duly to appreciate the value of Captain Sullivan's report, until it was permitted to see the testimony upon which the conclusions of that report professed to rest. And you were further directed to say that, putting aside for after examination the variations of fact, it seemed to this government that the assumption of the report was, that the United States fishermen were fishing illegally, because their fishing was being conducted at a time and by methods forbidden by certain colonial statutes; that the language of Lord Salisbury, in communicating the report with his approval, indicated the intention of Her Britannic Majesty's Government to maintain the position, that the treaty privileges secured to United States fishermen by the treaty of 1871 were held subject to such limitations as might be imposed upon their exercise by colonial legislation; and "that so grave a question, in its bearing upon the obligations of this government under the treaty, makes it necessary that the President should ask from Her Majesty's Government a frank avowal or disavowal of the paramount authority of provincial legislation to regulate the enjoyment by our people of the inshore fishery, which seems to be intimated, if not asserted, in Lord Salisbury's note."

In reply to this communication, Lord Salisbury, 7th November, 1878, transmitted to you the depositions which accompanied Captain Sullivan's report, and said:

"In pointing out that the American fishermen had broken the law within the territorial limits of Her Majesty's domains, I had no intention of inferentially laying down any principles of international law, and no advantage would, I think, be gained by doing so to a greater extent than the facts in question absolutely require. \* \* \* Her Majesty's Government will readily admit—what is, indeed, self-evident—that British sovereignty, as regards those waters, is limited in its scope by the engagements of the Treaty of Washington, which can not be modified or affected by any municipal legislation."

It is with the greatest pleasure that the United States Government receives this language as "the frank disavowal" which it asked "of the paramount authority of provincial legislation to regulate the enjoyment by our people of the inshore fishery."

Removing, as this explicit language does, the only serious difficulty which threatened to embarrass this discussion, I am now at liberty to resume the consideration of these differences in the same spirit and with the same hopes so fully and properly expressed in the concluding paragraph of Lord Salisbury's dispatch. He says:

"It is not explicitly stated in Mr. Evarts' dispatch that he considers any recent acts of the colonial legislature to be inconsistent with the rights acquired by the United States under the Treaty of Washington. But if that is the case, Her Majesty's Government will, in a friendly spirit, consider any representations he may think it right to make upon the subject, with the hope of coming to a satisfactory understanding."

It is the purpose, therefore, of the present dispatch to convey to you, in order that they may be submitted to Her Britannic Majesty's Government, the conclusions which have been reached by the Government of the United States as to the rights secured to its citizens under the treaty of 1871 in the herring fishery upon the Newfoundland coast, and the extent to which those rights have been infringed by the transactions in Fortune Bay on January 6, 1878.

Before doing so, however, I deem it proper, in order to clear the argument of all unnecessary issues, to correct what I consider certain misapprehensions of the views of this Government contained in Lord Salisbury's dispatch of 7th of November, 1878. The secretary for foreign affairs of Her Britannic Majesty says:

"If, however, it be admitted that the Newfoundland legislature have the right of binding Americans who fish within their waters by any laws which do not contravene existing treaties, it must be further conceded that the duty of determining the existence of such contravention must be undertaken by the governments, and can not be remitted to the discretion of each individual fisherman. For such discretion, if exercised on one side, can hardly be refused on the other. If any American fisherman may violently break a law which he believes to be contrary to a treaty, a Newfoundland fisherman may violently maintain it if he believes it to be in accordance with treaty."

His lordship can scarcely have intended this last proposition to be taken in its literal significance. An infraction of law may be accompanied by violence which affects the person or property of an individual, and that individual may be warranted in resisting such illegal violence, so far as it directly affects him, without reference to the relation of the act of violence to the law which it infringes, but simply as a forcible invasion of his rights of person or property. But that the infraction of a general municipal law, with or without violence, can be corrected and punished by a mob, without official character or direction, and who assume both to interpret and administer the law in controversy, is a proposition which does not require the reply of elaborate argument between two governments whose daily life depends upon the steady application of the sound and safe principles of English jurisprudence. However this may be, the Government of the United States can not for a moment admit that the conduct of the United States fishermen in Fortune Bay was in any—the remotest—degree a violent breach of law.



Granting any and all the force which may be claimed for the colonial legislation, the action of the United States fishermen was the peaceable prosecution of an innocent industry, to which they thought they were entitled. Its pursuit invaded no man's rights, committed violence upon no man's person, and if trespassing beyond its lawful limits could have been promptly and quietly stopped by the interference and representations of the lawfully constituted authorities. They were acting under the provisions of the very statute which they are alleged to have violated, for it seems to have escaped the attention of Lord Salisbury that section 28 of the title of the consolidated acts referred to contains the provision that "Nothing in this chapter shall affect the rights and privileges granted by treaty to the subjects of any state or power in amity with Her Majesty." They were engaged, as I shall hereafter demonstrate, in a lawful industry, guaranteed by the treaty of 1871, in a method which was recognized as legitimate by the award of the Halifax Commission, the privilege to exercise which their government had agreed to pay for. They were forcibly stopped, not by legal authority, but by mob violence. They made no resistance, withdrew from the fishing grounds, and represented the outrage to their Government, thus acting in entire conformity with the principle as justly stated by Lord Salisbury himself, that—

"If it be admitted, however, that the Newfoundland legislature have the right of binding Americans who fish within their waters by any laws which do not contravene existing treaties, it must be further conceded that the duty of determining the existence of such contravention must be undertaken by the governments, and can not be remitted to the judgment of each individual fisherman."

There is another passage of Lord Salisbury's dispatch to which I should call your attention. Lord Salisbury says:

"I hardly believe, however, that Mr. Evarts would in discussion adhere to the broad doctrine, which some portion of his language would appear to convey, that no British authority has a right to pass any kind of laws binding Americans who are fishing in British waters; for if that contention be just the same disability applies *a fortiori* to any other powers, and the waters must be delivered over to anarchy."

I certainly can not recall any language of mine in this correspondence which is capable of so extraordinary a construction. I have nowhere taken any position larger or broader than that which Lord Salisbury says:

"Her Majesty's Government will readily admit, what is, indeed, self-evident, that British sovereignty, as regards these waters, is limited in its scope by the engagements of the Treaty of Washington, which can not be affected or modified by any municipal legislation."

I have never denied the full authority and jurisdiction, either of the imperial or colonial governments, over their territorial waters, except so far as by treaty that authority and jurisdiction have been deliberately limited by these governments themselves. Under no claim or authority suggested or advocated by me could any other government demand exemption from the provisions of British or colonial law, unless that exemption was secured by treaty; and if

these waters must be delivered over to anarchy, it will not be in consequence of any pretensions of the United States Government, but because the British Government has, by its own treaties, to use Lord Salisbury's phrase, limited the scope of British sovereignty. I am not aware of any such treaty engagements with other powers, but if there are, it would be neither my privilege nor duty to consider or criticise their consequences where the interests of the United States are not concerned.

After a careful comparison of all the depositions furnished to both governments, the United States Government is of opinion that the following facts will not be disputed:

1. That twenty-two vessels belonging to citizens of the United States, viz, *Fred. P. Frye, Mary and M., Lizzie and Namari, Edward E. Webster, W. E. McDonald, Crest of the Wave, F. A. Smith, Hereward, Moses Adams, Charles E. Warren, Moro Castle, Wildfire, Maud and Effie, Isaac Rich, Bunker Hill, Bonanza, H. M. Rogers, Moses Knowlton, John W. Bray, Maud B. Wetherell, New England, and Ontario*, went from Gloucester, a town in Massachusetts, United States, to Fortune Bay, in Newfoundland, in the winter of 1877-1878, for the purpose of procuring herring.

2. That these vessels waited at Fortune Bay for several weeks (from about December 15, 1877, to January 6, 1878) for the expected arrival of schools of herring in that harbor.

3. That on Sunday, January 6, 1878, the herring entered the bay in great numbers, and that four of the vessels sent their boats with seines to commence fishing operations, and the others were proceeding to follow.

4. That the parties thus seining were compelled, by a large and violent mob of the inhabitants of Newfoundland, to take up their seines, discharge the fish already inclosed, and abandon their fishery, and that in one case, at least, the seine was absolutely destroyed.

5. That these seines were being used in the interest of all the United States vessels waiting for cargoes in the harbor, and that the catch undisturbed would have been sufficient to load all of them with profitable cargoes. The great quantity of fish in the harbor, and the fact that the United States vessels if permitted to fish would all have obtained full cargoes, is admitted in the British depositions.

"If the Americans had been allowed to secure all the herrings in the bay for themselves, which they could have done that day, they would have filled all their vessels, and the neighboring fishermen would have lost all chance on the following week day." (Deposition of James Searwell.)

"The Americans by hauling herring that day, when the Englishmen could not, were robbing them of their lawful and just chance of securing their share in them; and, further, had they secured all they had barred, they would, I believe, have filled every vessel of theirs in the bay." (Deposition of John Chutt.)

See also affidavits of the United States captains.

6. That in consequence of this violence all the vessels abandoned the fishing grounds, some without cargoes, some with very small cargoes, purchased from the natives, and their voyages were a loss to their owners.



7. That the seining was conducted at a distance from any land or fishing privilege or the occupation of any British subject. (See affidavits of Willard G. Rode, Charles Doyle, and Michael B. Murray.)

8. That none of the United States vessels made any further attempts to fish, but three or four which were delayed in the neighborhood purchased small supplies of herring. (See British depositions of John Saunders and Silas Fudge, wherein is stated that the United States vessels only remained a few days, and that after January 6 no fish came into the harbor.)

All the United States affidavits show that the United States vessels were afraid to use their seines after this, and that they left almost immediately, most of them coming home in ballast.

The provisions of the treaty of Washington (1871), by which the right to prosecute this fishery was secured to the citizens of the United States, are very simple and very explicit.

The language of the treaty is as follows:

"XVIII. It is agreed by the high contracting parties that in addition to the liberties secured to the United States fishermen by the convention between the United States and Great Britain, signed at London on the 20th day of October, 1818, of taking, curing, and drying fish on certain coasts of the British North American colonies, therein defined, the inhabitants of the United States shall have, in common with the subjects of Her Britannic Majesty, the liberty for the term of years mentioned in Article XXXIII of this treaty to take fish of every kind, except shell-fish, on the sea coast and shores and in the bays, harbors, and creeks of the provinces of Quebec, &c.

"XXXII. It is further agreed that the provisions and stipulations of Articles XVIII to XXV of this treaty, inclusive, shall extend to the colony of Newfoundland, so far as they are applicable."

Title XXVII, chapter 102, of the consolidated acts of Newfoundland, provides:

"SECTION 1. That no person shall take herring on the coast of Newfoundland by a seine or other such contrivance, at any time between the 20th day of October and the 12th day of April, in any year, or at any time use a seine except by way of shooting and forth-with hauling the same.

"SEC. 2. That no person shall, at any time, between the 20th day of December and the 1st day of April, in any year, catch or take herring with seines of less than 2½ inches mesh, &c.

"SEC. 4. No. person shall, between the 20th day of April and the 20th day of October, in any year, haul, catch, or take herring or other bait for exportation within one mile, measured by the shore across the water, of any settlement situated between Cape Chapeau Rouge and Point Emajer, near Cape Ray."

The act of 1876 provides that "No person shall, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, haul or take any herring, capelin, or squid, with net, seine, bunts, or any such contrivance for the purpose of such hauling or taking."

It seemed scarcely necessary to do more than place the provisions of the treaty and the provisions of these laws in contrast, and apply the principle so precisely and justly announced by Lord Salisbury as self-

evident, "that British sovereignty, as regards those waters, is limited in its scope by the engagements of the Treaty of Washington, which can not be modified or affected by any municipal legislation." For it will not be denied that the treaty privilege of "taking fish of every kind, except shell-fish, on the sea coast and shores, and in the bays, harbors, and creeks" of Newfoundland, is both seriously "modified" and injuriously affected by municipal legislation, which closes such fishery absolutely for seven months of the year, prescribes a special method of exercise, forbids exportation for five months, and, in certain localities, absolutely limits the three-mile area, which it was the express purpose of the treaty to open.

But this is not all. When the treaty of 1871 was negotiated, the British Government contended that the privilege extended to United States fishermen of free fishing within the three-mile territorial limit was so much more valuable than the equivalent offered in the treaty that a money compensation should be added to equalize the exchange. The Halifax Commission was appointed for the special purpose of determining that compensation, and, in order to do so, instituted an exhaustive examination of the history and value of the colonial fisheries, including the herring fishery of Newfoundland.

Before that commission, the United States Government contended that the frozen-herring fishery in Fortune Bay, Newfoundland, the very fishery now under discussion, was not a fishery, but a traffic; that the United States vessels which went there for herring always took out trading permits from the United States custom-house, which no other fishermen did; that the herring were caught by the natives in their nets and sold to the vessels, the captains of which froze the herring after purchase, and transported them to market, and that consequently this was a trade, a commerce beneficial to the Newfoundlanders, and not to be debited to the United States account of advantages gained by the treaty. To this the British Government replied, that whatever the character of the business had been, the treaty now gave the United States fishermen the right to catch as well as purchase herring; that the superior character of the United States vessels, the larger capacity and more efficient instrumentality of the seines used by the United States fishermen, together with their enterprise and energy, would all induce the United States fishermen to catch herring for themselves, and thus the treaty gave certain privileges to the United States fishermen, which inflicted upon the original proprietor a certain amount of loss and damage, from this dangerous competition, which, in justice to their interests, required compensation. The exercise of these privileges, therefore, as stated in the British case, as evidenced in the British testimony, as maintained in the British argument, for which the British Government demanded and received compensation, is the British construction of the extent of the liberty to fish in common, guaranteed by the treaty.

Mr. Whiteway, then attorney-general of Newfoundland, and one of the British counsel before the commission, said in his argument:

"And now one word with regard to the winter herring-fishery in Fortune Bay. It appears that from 40 to 50 United States vessels proceed there between the months of November and February, taking from thence cargoes of frozen herring of from 500 to 800 or 1,000 barrels. According to the evidence, these herrings have hitherto gener-



- ally been obtained by purchase. It is hardly possible, then, to conceive that the Americans will continue to buy, possessing as they now do the right to catch."

The British case states the argument as to the Newfoundland fisheries in the following language:

"It is asserted on the part of Her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it. It is possible, and even probable, that the United States fishermen may at any moment avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so, it would not relieve them from the obligation of making the just payment for a right which they have acquired subject to the condition of making that payment. The case may be not inaptly illustrated by the somewhat analogous one of a tenancy of shooting or fishing privileges; it is not because the tenant fails to exercise the rights which he has acquired by virtue of his lease that the proprietor should be debarred from the recovery of his rent.

"There is a marked contrast to the advantage of the United States citizens between the privilege of access to fisheries the most valuable and productive in the world and the barren right accorded to the inhabitants of Newfoundland, of fishing in the exhausted and preoccupied waters of the United States, north of the 39th parallel of north latitude, in which there is no field for lucrative operations, even if British subjects desired to resort to them; and there are strong grounds for believing that year by year, as United States fishermen resort in greater numbers to the coasts of Newfoundland, for the purpose of procuring bait and supplies, they will become more intimately acquainted with the resources of the inshore fisheries and their unlimited capacity for extension and development. As a matter of fact United States vessels have, since the Washington Treaty came into operation, been successfully engaged in these fisheries; and it is but reasonable to anticipate that as the advantages to be derived from them become more widely known larger numbers of United States fishermen will engage in them.

"A participation by fishermen of the United States in the freedom of these waters, must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and, while affording to the United States fishermen a profitable employment, must seriously interfere with local success. The extra amount of bait also which is required for the supply of the United States demand for the bank fishery must have the effect of diminishing the supply of cod for the inshores, as it is well known that the presence of that fish is caused by the attraction offered by a large quantity of bait fishes, and as this quantity diminishes the cod will resort in fewer numbers to the coast.

"The effect of this diminution may not in all probability be apparent for some years to come, and whilst United States fishermen will have the liberty of enjoying the fisheries for several years in their present teeming and remunerative state, the effects of overfishing may, after their right to participate in them has lapsed, become seriously prejudicial to the interests of the local fishermen.

## II. THE PRIVILEGE OF PROCURING BAIT AND SUPPLIES, REFITTING, DRYING, TRANSSHIPPING, &C.

"Apart from the immense value to United States fishermen of participation in the Newfoundland inshore fisheries, must be estimated the important privilege of procuring bait for the prosecution of the bank and deep-sea fisheries, which are capable of unlimited expansion. With Newfoundland as a basis of operations, the right of procuring bait, refitting their vessels, drying and curing fish, procuring ice in abundance for the preservation of bait, liberty of transshipping their cargoes, &c., an almost continuous prosecution of the bank fishery is secured to them. By means of these advantages, United States fishermen have acquired by the Treaty of Washington all the requisite facilities for increasing their fishing operations to such an extent as to enable them to supply the demand for fish food in the United States markets, and largely to furnish the other fish markets of the world, and thereby exercise a competition which must inevitably prejudice Newfoundland exporters. It must be remembered, in contrast with the foregoing, that United States fishing craft, before the conclusion of the treaty of Washington, could only avail themselves of the coast of Newfoundland for obtaining a supply of wood and water, for shelter, and for necessary repairs in case of accident, and for no other purpose whatever. They therefore prosecuted the bank fishery under great disadvantages, notwithstanding which, owing to the failure of the United States local fisheries, and the consequent necessity of providing new fishing grounds, the bank fisheries have developed into a lucrative source of employment to the fishermen of the United States.

"That this position is appreciated by those actively engaged in the bank fishery is attested by the statement of competent witnesses, whose evidence will be laid before the Commission."

And in the reply of the British Government, referring to the same Newfoundland fisheries, is the following declaration:

"As regards the herring fishery on the coast of Newfoundland, it is availed of to a considerable extent by the United States fishermen, and evidence will be adduced of large exportations by them in American vessels, particularly from Fortune Bay and the neighborhood, both to European and their own markets.

"The presence of United States fishermen upon the coast of Newfoundland, so far from being an advantage, as is assumed in the answer, operates most prejudicially to Newfoundland fishermen. Bait is not thrown overboard to attract the fish, as asserted, but the United States bank fishing vessels, visiting the coast in such large numbers as they do for the purpose of obtaining bait, sweep the coast, creeks, and inlets, thereby diminishing the supply of bait for local catch and scaring it from the grounds, where it would otherwise be an attraction for cod."

In support of these views, the most abundant testimony was produced by the British Government showing the extent of the United States herring fishery, the character and construction of the seines used, the time when the vessels came and left, and the employment of the native fishermen by the United States vessels. And it follows unanswerably that upon the existence of that fishery between the months of October and April (the very time prohibited by the



colonial law), and upon the use of just such seines as were used by the complainants in this case (the very seines forbidden by the colonial law), and because the increasing direct fishery of the United States vessels was interfering with native methods and native profits, the British Government demanded and received compensation for the damages thus alleged to proceed from "the liberty to take fish of every kind" secured by the treaty.

This Government cannot anticipate that the British Government will now contend that the time and method for which it asked and received compensation are forbidden by the terms of the very treaty under which it made the claim and received the payment. Indeed, the language of Lord Salisbury justifies the Government of the United States in drawing the conclusion that between itself and Her Britannic Majesty's Government there is no substantial difference in the construction of the privileges of the treaty of 1871, and that in the future the colonial regulation of the fisheries with which, as far as their own interests are concerned, we have neither right nor desire to intermeddle, will not be allowed to modify or affect the rights which have been guaranteed to citizens of the United States.

You will therefore say to Lord Salisbury that the Government of the United States considers the engagements of the treaty of 1871 contravened by the local legislation of Newfoundland, by the prohibition of the use of seines, by the closing of the fishery with seines between October and April, by the forbidding of fishing for the purpose of exportation between December and April, by the prohibition to fish on Sunday, by the allowance of nets only of a specified mesh, and by the limitation of the area of fishing between Cape Ray and Cape Chapeau Rouge. Of course, this is only upon the supposition that such laws are considered as applying to United States fishermen; as local regulations for native fishermen we have no concern with them. The contravention consists in excluding United States fishermen during the very times in which they have been used to pursue this industry, and forbidding the methods by which alone it can be profitably carried on. The exclusion of the time from October to April covers the only season in which frozen herring can be procured, while the prohibition of the seines would interfere with the vessels, who, occupied in cod-fishing during the summer, go to Fortune Bay in the winter, and would consequently have to make a complete change in their fishing gear, or depend entirely upon purchase from the natives for their supply. The prohibition of work on Sunday is impossible under the conditions of the fishery. The vessels must be at Fortune Bay at a certain time, and leave for market at a certain time. The entrance of the schools of herring is uncertain, and the time they stay equally so. Whenever they come they must be caught, and the evidence in this very case shows that after Sunday, the 6th of January, there was no other influx of these fish, and that prohibition on that day would have been equivalent to shutting out the fishermen for the season.

If I am correct in the views hitherto expressed, it follows that the United States Government must consider the United States fishermen as engaged in a lawful industry, from which they were driven by lawless violence at great loss and damage to them; and that as this was in violation of rights guaranteed by the Treaty of Washington, between Great Britain and the United States, they have reasonable ground

to expect at the hands of Her Britannic Majesty's Government proper compensation for the loss they have sustained. The United States Government, of course, desires to avoid an exaggerated estimate of the loss which has been actually sustained, but thinks you will find the elements for a fair calculation in the sworn statement of the owners, copies of which are herewith sent. You will find in the printed pamphlet which accompanies this, and which is the statement submitted to this department on behalf of twenty of the vessels, the expense of each vessel in preparation for the fishery and her estimated loss and damage. The same statement with regard to the two vessels *New England* and *Ontario*, not included in this list of twenty, you will find attached hereto, thus making a complete statement for the twenty-two vessels which were in Fortune Bay on the 6th January, 1878, and the government of the United States sees no reason to doubt the accuracy of these estimates. I find upon examining the testimony of one of the most intelligent of the Newfoundland witnesses called before the Halifax Commission by the British Government, Judge Bennett, formerly Speaker of the Colonial House, and himself largely interested in the business, that he estimates the Fortune Bay business in frozen herring, in the former years of purchase, at 20,000 to 25,000 barrels for the season and that it was increasing, and this is confirmed by others.

The evidence in this case shows that the catch which the United States fishing fleet had on this occasion actually realized was exceptionally large, and would have supplied profitable cargoes for all of them. When to this is added the fact that the whole winter was lost and these vessels compelled to return home in ballast; that this violence had such an effect on this special fishery that in the winter of 1878-'79 it has been almost entirely abandoned, and the former fleet of twenty-six vessels has been reduced to eight, none of whom went provided with seines, but were compelled to purchase their fish of the inhabitants of Newfoundland, the United States Government is of opinion that \$105,305.02 may be presented as an estimate of the loss as claimed, and you will consider that amount as being what this Government will regard as adequate compensation for loss and damage.

In conclusion I would not be doing justice to the wishes and opinions of the United States Government if I did not express its profound regret at the apparent conflict of interests which the exercise of its treaty privileges appears to have developed. There is no intention on the part of this Government that these privileges should be abused, and no desire that their full and free enjoyment should harm the Colonial fishermen. While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulations of the one should be entirely given to the other, yet if the mutual obligations of the treaty of 1871 are to be maintained, the United States Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right; a means of preserving the fisheries at their highest point of production, and of conciliating a community of interests by a just proportion of advantages and profits.

I am, etc.,

WM. M. EVARTS.



*Mr. Evarts to Mr. Babson.*

DEPARTMENT OF STATE,  
Washington, August 5, 1879.

SIR: Arrangements have been made by which the naval steamship *Kearsarge*, under the command of Commander Henry F. Picking, will spend some weeks in cruising over the fishing grounds resorted to by our fishing fleet in the waters of Newfoundland and the Gulf of St. Lawrence. You are desired to join that vessel at Shediack, New Brunswick, in company with Alfred D. Foster, esq., of Boston, with as little delay as possible. The vessel will be there ready to receive you, and Commander Picking will have been advised of the duty assigned you and Mr. Foster, as set forth in the instructions given you.

The general purpose of this cruise of the *Kearsarge* is to examine the condition and conduct of our fishing interest in those waters; to observe the methods and equipage of our fishermen as used in the fisheries within three miles of the shore, and the treatment shown them in the pursuit of their industry by the local authorities and the population of the coasts to which they resort. You have been selected to accompany the *Kearsarge* in this cruise from your thorough and prolonged experience in the fishing interests of our people—from your personal acquaintance of the character and habits of the men engaged in this pursuit, and from your especial conversance with the general scope of the relations between these interests and those of the coast population of the provinces as developed by the rivalry and conflict between them, which have seemed inseparable from the common enjoyments of the fisheries.

Alfred D. Foster, esq., will accompany you as your legal adviser and to be in charge of the taking and reducing to form of such depositions or statements as you or he may think of importance for the information of the government in this important inquiry.

The consuls of the United States at the different points at which you may touch are expected to give you every aid in their power towards the objects in view, and to furnish you with any information in their possession that may be properly incorporated in your report of the situation of affairs on the coasts.

It is quite possible that some of our fishermen may wish to be advised as to the course which the government thinks them justified in taking should the local authorities assume to interfere with them in the peaceable pursuit within the three-miles line of their fishing methods and the use of their seines and fishing-tackle. This interference, if attempted, will doubtless be based upon the local legislation of the provinces regulating the fisheries on their coast within the three-miles line. In the view of this government, these local regulations are incompetent to curtail or control the participation of our fishermen, as accorded by the Treaty of Washington, in their inshore fisheries. So long as our fishermen use methods and apparatus in their judgment adapted to catching the fish in the most efficient and most profitable manner to the industry they are pursuing, to wit, fishing from vessels manned and fitted from our ports, and seeking profit therefrom, and so long as they do not molest the provincial fishermen, pursuing their

own methods in their equal right, this government regards our fishermen as within the treaty right and under no necessity of conforming, either in regard to days or seasons, or apparatus, to the prescriptions of the local regulations of the provinces.

You will, however, be careful to make our fishermen understand that they are not to resist the lawful authorities in any legal or judicial process or proceedings which may be taken against them in maintenance of these local laws. Taking care to preserve due evidence of this interruption of their rights and of the loss and damage thus occasioned them, for the vindication of their rights and the redress of their grievances, they will leave to their government the proper representation to the British Government to secure indemnity for the past and the prevention of future injuries.

I do not deem it useful to indicate to Mr. Foster or yourself more specifically the line or methods of your inquiries. As full and trustworthy an exhibition of the working of the system of the Treaty of Washington within the three-miles line as you can gather from your own observation and from the evidence which you can acquire, is desired as the result of this expedition. While on board the *Kearsarge* you and Mr. Foster will be observant, of course, of the system of the ship's discipline so far as it may need to affect the execution of the duty confided to you, and to the cordial co-operation of the naval authorities both you and the government can safely trust the prosperity of the service expected from you.

You will correspond only with this department, and be careful to avoid any communications that may lead to any publication of the progress or results of the cruise, except by authority of this department.

F am, &c.,

WILLIAM M. EVARTS.

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*Mr. Evarts to Sir Edward Thornton.*

DEPARTMENT OF STATE,  
*Washington, August 5, 1879.*

SIR: I have the honor to acquaint you with the purpose of this government, in view of the importance of the pending questions respecting the fisheries of Newfoundland and the Gulf of Saint Lawrence, and for the better obtaining of the latest accessible information with respect to those fisheries, to send a naval vessel of the United States to the maritime provinces and ports of the Dominion and the adjacent fishing-grounds, for the purpose of making a careful examination of the conduct of those inshore fisheries by the American fishing fleet, which, under the Treaty of Washington, may visit those waters, and also of the treatment which our fishermen and their industry receive at the hands of the local authorities and population.

The United States steamer *Kearsarge*, under the charge of Commander Henry F. Pickens, U. S. N., has been detailed for the assigned duty, and is now in the Gulf, with orders to await at Shediac, New Brunswick, the arrival of the agent, who has been directed to embark at that place. This agent is instructed to make inquiry and report as to the operation of the treaty stipulations and local laws, and the general condition of affairs in that locality, so far as the fishing inter-



ests of citizens of the United States are concerned, with a view to a better understanding of the questions involved, and the adjustment of points of difference between the two governments, if practicable.

I have, &c.,

WM. M. EVARTS.

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*Mr. Welsh to Mr. Evarts.*

No. 347.]

LEGATION OF THE UNITED STATES,  
London, August 13, 1879.  
(Received August 28.)

SIR: I have the honor to acknowledge the receipt of your most important dispatch No. 347 of the 1st instant, containing the statement of the claims of the owners of twenty-two fishing vessels for loss and damage arising from the conduct of certain inhabitants of Newfoundland, at Fortune Bay, in January, 1878.

As this instruction did not arrive until yesterday, and as I am to present my letter of recall to Her Majesty to-morrow, I have no time to embody its statements and arguments in a separate note to Lord Salisbury. I think, besides, that it is so full, clear, and convincing in its present shape that I should weaken its force by changing its form.

I have taken the liberty, therefore, to send a copy of it to-day to Lord Salisbury with a note, of which I inclose a transcript.

As the details of the losses contained in the printed pamphlet which accompanied your instruction appeared to me to be important, and as there was not sufficient time to copy them, I have sent the appendix to the pamphlet, and also the original account of the owners of the *New England* and *Ontario*, to his lordship for his information, with a request that he should return them to this legation at his entire convenience. I think it desirable that additional copies of these papers should be furnished to us by the Department of State.

I have to add that I have also this day sent to Lord Salisbury the statement of a claim for damages on behalf of the owners of the schooner *Mist*, agreeably to your instruction, No. 346, of the 1st instant.

I have, &c.

JOHN WELSH.

[Inclosure.]

*Mr. Welsh to the Marquis of Salisbury.*

LEGATION OF THE UNITED STATES,  
London, August 13, 1879.

MY LORD: I have just received a very important dispatch from Mr. Evarts, stating the claims for damages, amounting to \$105,305.02, sustained by certain citizens of the United States, owners of twenty-two vessels, in Fortune Bay, Newfoundland, in the month of January, 1878, which claims have already formed the subjects of a previous correspondence with your lordship.

As the argument for the payment of these by Her Majesty's Government is presented by Mr. Evarts in a very full, clear, and forcible manner, I have thought it proper to submit this instruction to me in its original form to your lordship, asking for it an early and favorable consideration.

I have, &c.,

JOHN WELSH.

*Captain Kennedy, R. N. to Governor Sir J. Glover.*

"DRUID," AT ST. JOHN'S, August 26, 1879.

SIR: I have the honour to acknowledge the receipt of your Excellency's letter, inclosing a copy of a letter from the United States' Consul, together with correspondence relating to a disturbance between some English and American fishermen, at Smith's Sound, Trinity Bay, on the 16th of this month.

In compliance with your Excellency's wishes, I have detailed Her Majesty's gun-vessel "*Zephyr*" to convey Mr. Prowse, Q.C., to that part, to ascertain the truth of the charges advanced by the Americans, and I have to add that the "*Zephyr*" sailed this morning in pursuance of these orders.

I have, &c.

(Signed) W. R. KENNEDY.

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*Mr. Prowse to the Colonial Secretary.*

ST. JOHN'S, NEWFOUNDLAND, August 27, 1879.

SIR: Having proceeded to Smith's Sound, in Trinity Bay, in Her Majesty's ship "*Zephyr*," by order of the Government, to investigate the facts connected with an alleged obstruction by Newfoundland fishermen to the taking of bait fishes by the crew of an American schooner called the "*Howard Holbrook*," I have the honour to report, for the information of his Excellency the Governor, that, having made a careful examination of the facts at Smith's Sound, where we arrived last evening, and having taken a number of depositions there, which are appended to this Report, I am enabled to state that the facts of the case are as follow:—

The American schooner "*Howard Holbrook*" arrived at Aspey Cove, Smith's Sound. On Thursday, the 14th August, the master came in a dory, with the witness Martin Ryan, to that cove to seine for squid; the man referred to in the depositions, John Cooper, and his two men-servants, were on the beach preparing to have their breakfast. A conversation took place between Ryan and Cooper, the purport of which is given by Cooper, and confirmed by Ryan. Ryan said to Cooper that he was a Newfoundlander, and could seine; Cooper replied that he could not. Ryan said he would; and Cooper replied "You'd better try." Not a word was said by McFaden, the master of the American schooner and not a word was said by Cooper or any one else to him. Cooper alleges that he threatened no violence, and that he never intended to do any.

After the short conversation, which lasted a few minutes, Ryan and the master of the schooner went down to Lower Lances Cove, which is a short distance from Aspey Cove, and there shot their seine, and hauled some herring.

The schooner remained in the Sound until the following Monday, buying squids and jigging them, and that instead of any obstruction being offered to the American (Ryan's evidence shows) they were treated with the greatest kindness and hospitality.



From the short experience that I had of Cooper, who is an immense man, very outspoken and honest, with a great fund of humour, I feel convinced that his statement is substantially correct; his story is also confirmed, almost word for word, in all important points, by Ryan's own deposition taken before me, and by the evidence of other witnesses.

Knowing that the Government were most anxious to protect the rights of the fishermen of the United States under the Washington Treaty, I took special pains to obtain accurate information respecting the obstruction complained of by Consul Molloy; and I am happy to inform the Government that in this instance, at all events, there is no cause of complaint against our fishermen.

Ryan, who is favourably disposed towards the Americans, shows in his evidence the wisdom of the law against seining squid, and his opinion will be confirmed by every fisherman in the colony.

I have to thank Lieutenant Clutterbuck, R. N., commanding Her Majesty's ship "*Zephyr*," and his officers, for extreme courtesy and kindness, and for the ready assistance given me in carrying out the object of my mission.

I have, &c.,

(Signed) D. W. PROWSE.

*Governor Sir J. Glover to Sir M. Hicks Beach.*

GOVERNMENT HOUSE,  
*Newfoundland, August 28, 1879.*

SIR: I have the honour to inclose, for your information, copy of a letter from the United States' Consul at this port, dated the 23rd instant, putting forward a complaint that opposition had been offered by our fishermen to the crew of the American schooner *Howard Holbrook*, when attempting to seine for squid at Smith's Sound, in Trinity Bay.

2. This appearing to be a repetition of the interruption which occurred in Fortune Bay in 1878, I at once applied to the Senior Naval Officer for the service of one of Her Majesty's ships of war to convey to the spot a legal officer charged with the duty of inquiring into the correctness of the statements put forward to sustain the case which I conclude would, if supported by evidence, have been followed by the United States' Government submitting a claim for compensation.

3. The Senior Naval Officer, complying with my request, dispatched Her Majesty's ship *Zephyr* to Smith's Sound, and on her return I was furnished with the inclosed Report of Judge Prowse, the legal officer deputed by my Government to conduct the inquiry, which proves most fully, by sworn evidence, that the whole charge against our fishermen was frivolous, and void of all sustenance.

4. It will be seen from the evidence inclosed that the question involved is, whether our local laws for the protection of a fishery common to two Contracting Parties, but passed subsequent to the date of the Treaty, are binding on the one party who have not

assented to what they consider a modification of, or indeed a violation of, contract.

5. I should desire to be instructed on this point, because the great number of American vessels frequenting our waters in the exercise of their fishery rights under the Treaty of Washington may, ere the present season be ended, produce an indefinite number of claims for compensation on the part of the American Government.

6. The depositions which should accompany Mr. Prowse's Report are so voluminous that it has been found impossible to forward them by the present mail, but they will be sent by the next.

Trusting my proceedings may meet your approval, I have, &c.

(Signed) JOHN H. GLOVER.

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*Mr. Hoppin to the Marquis of Salisbury.*

Immediate.]

LEGATION OF THE UNITED STATES,  
London, November 21, 1879.

MY LORD: I received last night a cable dispatch from Mr. Evarts, requesting me to ask your lordship when he might expect an answer to Mr. Welsh's notes of the 13th of August last, in relation to the damages sustained by citizens of the United States in Fortune Bay in January, 1878.

As I am instructed to reply by telegraph I venture to solicit your lordship to give an early answer to Mr. Evarts's inquiry.

I have, &c.,

W. J. HOPPIN.

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*The Marquis of Salisbury to Mr. Hoppin.*

FOREIGN OFFICE, November 24, 1879.

SIR: I have the honor to acknowledge the receipt of your letter marked "Immediate," of the 21st instant, informing me that you had received on the previous evening a cable dispatch from Mr. Evarts, requesting you to inquire of me when an answer might be expected to Mr. Welsh's notes of the 13th of August last in relation to the damages sustained by citizens of the United States in Fortune Bay in January, 1878, and I have to state to you in reply that some delay has arisen owing to the necessity of a reference to Newfoundland, but that a communication will be addressed to you in answer to the notes in question at as early a date as possible.

I have, &c.,

SALISBURY.

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*Mr. Evarts to Mr. Hoppin.*

[Telegram.]

WASHINGTON, February 5, 1880.

HOPPIN, *Chargé, London:*

(Directing him to inquire at what time an answer in respect of the Fortune Bay claims might be expected, and to express the great chagrin of this government that no answer had already been made.)

EVARTS, *Secretary.*



*Mr. Hoppin to Mr. Evarts.*

No. 143.]

LEGATION OF THE UNITED STATES,  
*London, February 7, 1880.*  
 (Received February 24.)

SIR: I have the honor to acknowledge the receipt yesterday of your dispatch in cipher relating to the great delay of the British Government in answering our claim for the Fortune Bay damages. I knew that Lord Salisbury had been seriously ill for some time past at Hatfield, and I ascertained at the foreign office, where I made immediate inquiries, that his illness still continued and that he was not attending to business. I therefore made an appointment with Sir Julian Pauncefote, who is in charge of the foreign office, Lord Tenterden being absent, for an interview to-day. I have just returned from this interview.

I called his attention in the course of it to the fact that our claim was presented as early as the 13th of August; that Lord Salisbury promised on the 16th it should receive immediate attention; that his lordship assured us on the 24th of November that an answer should be sent at as early a date as possible, and that nearly two months and a half had now elapsed without our having been favored with one. I then expressed the chagrin you felt at this delay, and gave him a copy of the translation of your cipher telegram.

Sir Julian admitted the delay, and said that it arose in part from the importance of the questions involved in the discussion; that after the claim had been received it was thought advisable to consult the authorities in Newfoundland; that some time elapsed before their answer arrived, when the matter was placed in his (Sir Julian's) hands to prepare a case upon it for submission to the law officers of the crown; that these gentlemen had the case before them still, the reason for their delay being the great importance of the points involved, and also the accumulation of references in other matters which had been made to them during the recess of Parliament.

Sir Julian promised that he would communicate with them immediately and press for a report, and would send them a copy of your telegram to hasten their action. He said, also, that he should send a copy of this to Lord Salisbury, notwithstanding his physician's injunctions that his lordship should abstain from all business. Finally he declared that I might expect to receive on Monday, for communication to yourself, something more definite in relation to this matter.

I have, &amp;c.,

W. J. HOPPIN.

*Mr. Hoppin to Mr. Evarts.*

No. 147.]

LEGATION OF THE UNITED STATES,  
*London, February 10, 1880.*  
 (Received February 24.)

SIR: Referring to my No. 143, of the 7th instant, I have the honor to state that up to this time I have not received any further communication from the foreign office as to when we may expect an answer to our Fortune Bay claims, although, as I informed you both by that dis-

patch and by cable, Sir Julian Pauncefote gave me to understand he should send me more definite information on that point yesterday.

I presume that his silence arises from Lord Salisbury's continued illness. It is possible a note may arrive after the closing of the bag. Whenever it comes I shall send you the substance of it by cable.

It is proper for me to state, in addition to what I wrote you on Saturday, that Sir Julian Pauncefote intimated that they would probably be able to receive the opinions of the law officers of the crown very shortly, so that with the additional delay of reconsidering the matter in the foreign office, we might rely upon having a reply certainly within a month from the present time; but he preferred I should make no positive statement on this point until I should hear from him again.

I have, &c.,

W. J. HOPPIN.

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*Mr. Hoppin to Mr. Evarts.*

No. 150.]

LEGATION OF THE UNITED STATES,  
London, February 14, 1880.

(Received February 24.)

SIR: Referring to my Nos. 143 and 147, of the 7th and 10th instant, I have the honor to inclose herewith a copy of a note which I received late in the evening of the 13th instant from Sir Julian Pauncefote, desiring me to convey to you the regrets of Her Majesty's Government for their unavoidable delay in answering your note in relation to the Fortune Bay claims. It will be observed that he gives the same reasons for his delay, and announces the same intention to expedite the action of the government here in this matter, which he stated to me at our interview on the 7th instant, and which I had the honor to communicate to you in the dispatches above mentioned and in my telegrams of the 11th and 13th instant.

I have, &c.,

W. J. HOPPIN.

[Inclosure.]

*Sir Julian Pauncefote to Mr. Hoppin.*

FOREIGN OFFICE, February 12, 1880.

SIR: With reference to the telegram addressed to you by Mr. Evarts relative to the Fortune Bay question, a copy of which you communicated to me, I have the honor to request that you will convey to Mr. Evarts the regret of Her Majesty's Government at the delay which has unavoidably occurred in answering the claim of the United States Government. On receipt of the report upon the case, which had been called for from the Government of Newfoundland, it was found necessary to refer certain points to the law officers of the crown for their opinion, and owing to the great pressure of business after the Parliamentary recess, and on the reopening of the law courts, as well as from the voluminous character of the documents submitted to them, they have been unable up to the present time to complete their examination of the case.

They will be immediately requested to expedite their report, and as early as possible after the receipt of it I shall not fail to make known



to you, for communication to your government, the views of Her Majesty's Government on the question.

I have, &c.,

In the absence of Lord Salisbury :

JULIAN PAUNCEFOTE.

*Mr. Hoppin to Mr. Evarts.*

LEGATION OF THE UNITED STATES,  
*London (Saturday, 5 p. m.), February 14, 1880.*

DEAR MR. EVARTS: My attention has just been called to the passage in yesterday's Times, which I have marked with red pencil, in which a question is asked of the under foreign secretary about the Fortune Bay claims.

I have no time to inclose this in a regular dispatch.

Very respectfully, &c.,

W. J. HOPPIN.

[Inclosure.]

[The Times, Friday, February 13, 1880.]

HOUSE OF COMMONS, *Thursday, February 12.*

#### CANADIAN AND NEWFOUNDLAND FISHERIES.

Mr. Gourley asked whether the claim of the United States Government for \$103,000 for damages alleged to have been done by Newfoundland fishermen in Fortune Bay to the Massachusetts fishing fleet had been amicably arranged; what measures were being adopted for the purpose of abrogating or amending clause 33 of the Treaty of Washington relative to the Canadian and Newfoundland inshore fisheries; and whether steps were being taken for the purpose of ascertaining if the proviso of the convention of 1818, which admits American fishermen to enter British North American bays and harbors for the purpose of shelter, repairing damages, and purchase of wood and water, was intended to exclude them from going inshore to traffic, transship, fish, purchase stores, mend nets, and hire seamen.

Mr. BOURKE. The claim of the United States Government for damages alleged to have been done by Newfoundland fishermen in Fortune Bay is still under the consideration of Her Majesty's Government. No measures are being adopted for the purpose of abrogating or amending clause 33 of the Treaty of Washington. The extent of the fishing privileges accorded to the United States on the shores of Canada and Newfoundland is laid down in the convention of 1818 and in the Treaty of Washington of 1871. Her Majesty's Government have not at present found it necessary to make any communication to the United States Government with a view of defining more precisely the exact interpretation of the language of those treaties.

Mr. Gourley said that on an early day he would call attention to the convention of 1818 between this country and the United States relative to fisheries.

*Mr. Evarts to Mr. Hoppin.*

[Telegram.]

WASHINGTON, *February 26, 1880.*

HOPPIN, *Chargé, London:*

(Stating the increased chagrin with which this government learns, from his No. 147, of there being even a possibility of an additional month's delay, and directing him to urge Her Majesty's Government to avoid it if possible.)

EVARTS.

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*Mr. Hoppin to the Marquis of Salisbury.*

LEGATION OF THE UNITED STATES,  
*London, February 27, 1880.*

MY LORD: I have the honor to acquaint you that I received from the honorable the Secretary of State, last evening, a further telegram in relation to the delay of Her Majesty's Government in answering our claims for damages on account of the proceedings at Fortune Bay.

Your lordship will be good enough to remember that on the 7th instant, in the absence of your lordship, I had a conversation with Sir Julian Pauncefote at the foreign office on this subject, and gave him a copy of the cable dispatch I had received from Mr. Evarts the day before.

Afterwards, on the 12th instant, I received from Sir Julian a note in relation to this matter, a copy of which I sent to Mr. Evarts on the 14th, having already telegraphed the substance of it to him on the 13th instant.

During our conversation on the 7th of February, when I pressed Sir Julian Pauncefote for an approximate statement of the time within which we might expect your lordship's reply to our claims, he intimated that it would certainly be given within a month from that date, and I so informed Mr. Evarts in a dispatch of the 10th of February.

In the cable message which I have now received, Mr. Evarts states that he learns with "increased chagrin," from my dispatch to him last mentioned, "of even a possible further delay of one month," and he instructs me to "urge its avoidance if possible."

I lose no time, therefore, in bringing this subject again to your lordship's attention, and in expressing the disquiet which Mr. Evarts feels that an answer to these claims which were brought to the notice of Her Majesty's Government so long ago as the 13th of August last may possibly be still further delayed.

I have, &c.,

W. J. HOPPIN.

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*The Marquis of Salisbury to Mr. Hoppin.*

FOREIGN OFFICE, *March 2, 1880.*

SIR: I have the honor to acknowledge the receipt of your communication of the 27th ultimo, informing me that you had on the evening of the preceding day received a further telegram from Mr. Evarts



in relation to the delay of Her Majesty's Government in replying to the claim put forward by the United States Government in connection with the occurrences at Fortune Bay in January, 1878, and I have to state to you with reference thereto, that the report of the law officers of the crown upon the case has now been received, and that therefore the reply of Her Majesty's Government will be sent with the least possible delay, having regard to the question under consideration.

I have, &c.,

SALISBURY.

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*The Marquis of Salisbury to Mr. Hoppin.*

FOREIGN OFFICE, April 3, 1880.

SIR: In the note which I had the honor to address to you on the 12th of February I explained the reason why a certain time has unavoidably elapsed, before Her Majesty's Government were in a position to reply to Mr. Welsh's notes of the 13th of August last, in which he preferred, on the part of your government, a claim for \$105,305.02, as compensation to some United States fishermen, on account of losses stated to have been sustained by them through certain occurrences which took place at Fortune Bay, Newfoundland, on the 6th of January, 1878. The delay which has arisen has been occasioned by the necessity of instituting a very careful inquiry into the circumstances of the case, to which, in all its bearings, Her Majesty's Government were anxious to give the fullest consideration before coming to a decision. Her Majesty's Government having now completed that inquiry, so far as lies within their power, I beg leave to request you to be so good as to communicate to your government the following observations on the case.

In considering whether compensation can properly be demanded and paid in this case, regard must be had to the facts as established, and to the intent and effect of the articles of the Treaty of Washington and the convention of 1818 which are applicable to those facts.

The facts, so far as they are known to Her Majesty's Government, are disclosed by the affidavits contained in the inclosed printed paper, which, for convenience of reference, have been numbered in consecutive order. Nos. 1 and 2 were received by Her Majesty's Government from his excellency the governor of Newfoundland. Nos. 3 to 10, inclusive, were attached to the report made by Captain Sullivan, of Her Majesty's ship *Sirius*, who was instructed to make an inquiry into the case. These were communicated to Mr. Welsh with my note of the 7th of November, 1878. Nos. 11 to 16, inclusive, are the affidavits of United States fishermen, printed in the New York Herald of the 28th of January, 1878, and were received by Her Majesty's minister at Washington. They have not been received officially from the Government of the United States, but Her Majesty's Government see no reason to doubt their authenticity. Nos. 17 to 22 were annexed to Mr. Welsh's note of the 13th of August last.

A careful examination of the above evidence shows that on the day in question a large number of the crews of the United States fishing vessels came on shore and from the beach barred the herrings, the ends of their seines being secured to the shore. That the fisher-

men of the locality remonstrated against these proceedings, and, upon their remonstrance proving unavailing, removed the nets by force.

Such being the facts, the following two questions arise:

1. Have United States fishermen the right to use the strand for purposes of actual fishing?

2. Have they the right to take herrings with a seine at the season of the year in question, or to use a seine at any season of the year for the purpose of barring herrings on the coast of Newfoundland?

The answers to the above questions depend on the interpretation of the treaties.

With regard to the first question, namely, the right to the strand fishery, I would observe that article 1 of the convention between Great Britain and the United States of the 20th of October, 1818, secured to citizens of the United States the right, in common with British subjects, to take fish of every kind on certain specified portions of the coast of Newfoundland, and to use the shore for the purposes of purchasing wood and obtaining water, and for no other purpose whatever.

Articles XVIII and XXXII of the Treaty of Washington super-added to the above-mentioned privileges the right for United States fishermen to take fish of every kind (with certain exceptions not relevant to the present case) on all portions of the coast of that island, and permission to land for the purpose of drying their nets and curing their fish, "provided that in so doing they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the same purpose."

Thus whilst absolute freedom in the matter of fishing in territorial waters is granted, the right to use the shore for four specified purposes alone is mentioned in the treaty articles, from which United States fishermen derive their privileges, namely, to purchase wood, to obtain water, to dry nets, and cure fish.

The citizens of the United States are thus by clear implication absolutely precluded from the use of the shore in the direct act of catching fish. This view was maintained in the strongest manner before the Halifax Commission by the United States agent, who, with reference to the proper interpretation to be placed on the treaty stipulations, used the following language: "No rights to do anything upon the land are conferred upon the citizens of the United States under this treaty, with the single exception of the right to dry nets and cure fish on the shores of the Magdalen Islands, if we did not possess that before. No right to land for the purpose of seining from the shore; no right to the 'strand fishery,' as it has been called; no right to do anything except, water-borne on our vessels, to go within the limits which had been previously forbidden.

"So far as the herring trade goes, we could not if we were disposed to carry it on successfully under the provisions of the treaty, for this herring trade is substantially a seining from the shore, a strand fishing, as it is called, and we have no right anywhere conferred by this treaty to go ashore and seine herring any more than we have to establish fishtraps."

Her Majesty's Government, therefore, cannot anticipate that any difference of opinion will be found to exist between the two governments on this point.



The incident now under discussion occurred on that part of the shore of Fortune Bay which is called Tickle Beach, Long Harbor. On this beach is situated the fishing settlement of Mark Bolt, a British fisherman, who in his evidence, taken upon oath, deposes as follows:

"The ground I occupy was granted me for life by government, and for which I have to pay a fee. There are two families on the beach; there were three in winter. Our living is dependent on our fishing off this settlement. If these large American seines are allowed to be hauled, it forces me away from the place."

John Saunders, another British fisherman of Tickle Beach, deposed that the United States fishermen hauled their seine on the beach immediately in front of his property.

The United States fishermen, therefore, on the occasion in question, not only exceeded the limits of their treaty privileges by fishing from the shore, but they "interfered with the rights of private property and with British fishermen in the peaceable use of that part of the coast in their occupancy for the same purpose," contrary to the express provisions of Articles XVIII and XXXII of the Treaty of Washington.

Further, they used seines for the purpose of in-barring herrings, and this leads me to the consideration of the second question, namely, whether United States fishermen have the right to take herrings with a seine at the season of the year in question, or to use a seine at any season of the year for the purpose of barring herrings on the coast of Newfoundland.

The in-barring of herrings is a practice most injurious, and, if continued, calculated in time to destroy the fishery; consequently it has been prohibited by statute since 1862.

In my note to Mr. Welsh, of the 7th of November, 1878, I stated "that British sovereignty, as regards these waters, is limited in its scope by the engagements of the Treaty of Washington, which *cannot* be modified or affected by any municipal legislation," and Her Majesty's Government fully admit that United States fishermen have the right of participation on the Newfoundland *inshore fisheries, in common* with British subjects, as specified in Article XVIII of that treaty. But it can not be claimed, consistently with this right of participation in common with the British fishermen, that the United States fishermen have any *other*, and still less that they have *greater* rights than the British fishermen had at the *date* of the treaty.

If, then, at the *date* of the signature of the Treaty of Washington, certain restraints were, by the municipal law, imposed upon the *British fishermen*, the United States fishermen were, by the *express terms* of the treaty, equally subjected to those restraints, and the obligation to observe in common with the British the then existing local laws and regulations, which is implied by the words "*in common*," attached to the United States citizens as *soon* as they claimed the benefit of the treaty. That such was the view entertained by the Government of the United States during the existence of the reciprocity treaty, under which United States fishermen enjoyed precisely the same rights of fishing as they do now under the Treaty of Washington, is proved conclusively by the circular issued on the 28th of March, 1856, to the collector of customs at Boston, which so thoroughly ex-

pressed the views of Her Majesty's Government on this point that I quote it here *in extenso*.

"DEPARTMENT OF STATE,  
"Washington, March 28, 1856.

"SIR: It is understood that there are certain acts of the British North American colonial legislatures, and also, perhaps, executive regulations intended to prevent the wanton destruction of the fish which frequent the coasts of the colonies, and injuries to the fishing thereon. It is deemed reasonable and desirable that both the United States and British fishermen should pay a like respect to such laws and regulations which are designed to preserve and increase the productiveness of the fisheries on those coasts. Such being the object of these laws and regulations, the observance of them is enforced upon the citizens of the United States in the like manner as they are observed by British subjects. By granting the mutual use of the inshore fisheries, neither party has yielded its right to civic jurisdiction over a marine league along its coasts.

"Its laws are as obligatory upon the citizens or subjects of the other as upon its own. The laws of the British provinces, not in conflict with the provisions of the reciprocity treaty, would be as binding upon the citizens of the United States within that jurisdiction as upon British subjects. Should they be so framed or executed as to make any discrimination in favor of British fishermen, or to impair the rights secured to American fishermen by that treaty, those injuriously affected by them will appeal to this government for redress.

"In presenting complaints of this kind, should there be cause for doing so, they are requested to furnish the Department of State with a copy of the law or regulation which is alleged injuriously to affect their rights or to make an unfair discrimination between the fishermen of the respective countries, or with a statement of any supposed grievance in the execution of such law or regulation, in order that the matter may be arranged by the two governments.

"You will make this direction known to the masters of such fishing vessels as belong to your port in such manner as you may deem most advisable.

(Signed) "W. L. MARCY.

"COLLECTOR OF THE CUSTOMS, Boston."

I have the honor to inclose a copy of an act passed by the colonial legislature of Newfoundland, on the 27th March, 1862, for the protection of the herring and salmon fisheries on the coast, and a copy of cap. 102 of the consolidated statutes of Newfoundland, passed in 1872. The first section of the act of 1862, prohibiting the taking of herrings with a seine between the 20th day of October and the 12th day of April; and, further, prohibited the use of seines at any time for the purpose of barring herrings. These regulations, which were in force at the date of the Treaty of Washington, were not abolished, but confirmed by the subsequent statutes, and are binding under the treaty upon the citizens of the United States in common with British subjects.

The United States fishermen, therefore, in landing for the purpose of fishing at Tickle Beach, in using a seine at a prohibited time, and in barring herrings with seines from the shore exceeded their treaty privileges, and were engaged in unlawful acts.



Her Majesty's Government have no wish to insist on any illiberal construction of the language of the treaty, and would not consider it necessary to make any formal complaint on the subject of a casual infringement of the letter of its stipulations which did not involve any substantial detriment to British interests and to the fishery in general.

An excess on the part of the United States fishermen of the precise limit of the rights secured to them might proceed as much from ignorance as from wilfulness; but the present claim for compensation is based on losses resulting from a collision which was the direct consequence of such excess, and Her Majesty's Government feel bound to point to the fact that the United States fishermen were the first and real cause of the mischief, by overstepping the limits of the privileges secured to them in a manner gravely prejudicial to the rights of other fishermen.

For the reasons above stated, Her Majesty's Government are of opinion that, under the circumstances of the case as at present within their knowledge, the claim advanced by the United States fishermen for compensation on account of the losses stated to have been sustained by them on the occasion in question is one which should not be entertained.

Mr. Evarts will not require to be assured that Her Majesty's Government, while unable to admit the contention of the United States Government on the present occasion, are fully sensible of the evils arising from any difference of opinion between the two governments in regard to the fishery rights of their respective subjects. They have always admitted the incompetence of the colonial or the imperial legislature to limit by subsequent legislation the advantages secured by treaty to the subjects of another power. If it should be the opinion of the Government of the United States that any act of the colonial legislature subsequent in date to the Treaty of Washington has trenched upon the rights enjoyed by the citizens of the United States in virtue of that instrument, Her Majesty's Government will consider any communication addressed to them in that view with a cordial and anxious desire to remove all just grounds of complaint.

I have, etc.,

SALISBURY.

Appendix A.—Collected affidavits of American fishermen submitted to the British Government.

Appendix B.—Statutes of Newfoundland applicable to the fisheries. (See *ante*, pp. 161–200.)

#### APPENDIX A.

(1.)

##### *Deposition of Alfred Noel.*

NEWFOUNDLAND, CENTRAL DISTRICT, ST. JOHN'S, *to wit*:

The examination of Alfred Noel, of St. John's aforesaid, master mariner, taken upon oath, and who saith:

I am master of the schooner *Nautilus* of this port, and on the 19th day of December last I was at Long Harbour, in Fortune Bay, in the *Nautilus*, which was anchored off Woody Island. I had a crew of

seven men, and I was there engaged in the herring fishery. There were several American schooners; seven of them were lying off Woody Island, and two French vessels. This island forms the harbour within half a mile of the narrows of Long Harbour; and other American schooners and Newfoundland fishing craft were inside Woody Island, which is the inside part of Long Harbour. All the craft there, English and American, were hauling herrings in seines and nets, and the Americans were purchasing herring from the English. Everything went off quietly, and the greatest harmony prevailed until Sunday, the 6th day of January, when about half-past 2 o'clock in the afternoon five seines, belonging to the American schooners, were put into the water by their crews at the beach on the north-east side of Long Harbour. I know two of the captains by name, Dago and Jacobs, belonging to Gloster, United States, but do not know the names of their schooners. The whole five seines were barred full of herrings, when the English crews of the crafts belonging to Fortune Bay ordered them to take their seines up or they would take them up for them; and the Fortune Bay men, finding they would not do as they were requested, then hauled up two of the American seines, but without any damage or injury, and two were at the same time taken up by the Americans; and at the same time a seine belonging to Captain Dago was taken up by the Fortune Bay men, the herrings thrown out, and the seine was torn up and destroyed. Before this occurrence on the said Sunday, one of the American schooners had a seine barred with herrings on the beach at Long Harbour for seven days, and it was not at any time meddled with by the Fortune Bay men or any one. Some of the Fortune Bay men had nets out in the water on that Sunday, and the same had been there during the week, but none of the Newfoundland fishermen attempted to haul herrings on Sunday at any time while I was at Long Harbour. The Americans' practice had been until lately to purchase herring from the Newfoundland fishermen in Fortune Bay, but this year and last year the Americans have brought their own seines to haul herring for themselves. The American seines are 30 fathoms deep and 200 fathoms long, while those used by our fishermen are 12 to 13 fathoms deep and 120 fathoms long. These American seines are used for barring herring in deep water, such as the Fortune Bay Harbors, viz., Long Harbour, Bay del Nord, and Rencontre. Our fishermen never bar herrings, and herrings have never been barred in Fortune Bay, to my knowledge, until the Americans brought the large seines I have alluded to into Fortune Bay and used them there to the disadvantage of our fishermen. This mode of barring herrings in such harbours as I have mentioned is most destructive and ruinous to the herring fishery in those localities. I do not know the names of the persons who destroyed the seines; there were about eighty vessels from different harbours of Fortune Bay at Long Harbour at the time the seine was destroyed by a great lot of people. I left Long Harbour for St. John's on the 31st day of January and arrived here on the 4th instant.

ALFRED NOEL.

Sworn before me at St. John's aforesaid, this 8th day February, A. D. 1878.

(Signed) D. H. PROWSE,  
*J. P. for Newfoundland.*



(2.)

*Deposition of John Rumsey.*CENTRAL DISTRICT, ST. JOHN'S, *to wit*:

The examination of John Rumsey, of St. John's, master mariner, taken upon oath, who saith:

On or about the 14th November last I sailed from St. John's to Fortune Bay for a cargo of herring. I arrived in Long Harbour, Fortune Bay, about Christmas last. I found about 200 schooners there looking for herring; twelve of the schooners were Americans; my schooner was called the *Briton*, six hands all told. I got most of my herring between Christmas and the 8th of January. Most all the schooners in Long Harbour lay inside of Woody Island. Woody Island is about three miles from the entrance of Long Harbour. On the northern side, rather above the island, there is a fine beach about a mile long. This is the best hauling place in Long Harbour, and most all the herrings were taken there. It is only this year and last year that the American schooners have brought down very large seines for catching herring. I have been informed that some of these seines were 250 fathoms long and 35 fathoms deep. The seines which our Newfoundland fishermen use are about 120 fathoms long and from 8 to 13 fathoms deep. In the first week in January there were four or five American schooners who had the beach above mentioned barred for herring. The mode of inbarring for herring is as follows: When a place is selected, generally a smooth beach with deep water outside free from rocks, a party is sent ashore with a long line from one end of the seine; the seine-boat then goes off with the seine, makes a long sweep, and the other end of the seine is then brought into the beach also; then the crew begin to haul together on both ends of the seine with long seine lines running fore and aft up and down the beach; four or five seines thus barring herring would cover all the hauling ground on this long beach I have spoken of, and would occupy all the best ground for hauling herring in Long Harbour. On the first Sunday in January the beach was barred by four or five large American seines. On that day after dinner, a large number of people belonging to the crews of the Fortune Bay schooners then in Long Harbour went over to the beach, and I was informed there were 600 or 700 Newfoundland fishermen there. The Americans had barred the herring, and were hauling on their seines on the Sunday morning. The Newfoundland fishermen told the American captains to take up their seines or they would take them up for them. All the American seines were then taken up which were set on a Sunday except one; this one the American captain who owned it refused to take up. The Newfoundland fishermen then hauled it ashore, took the herrings out of the seine, and according as they hauled the seine out of the water they tore it up. I saw the seine the next day, Monday, on the beach, and it was completely destroyed: it was an old second-hand seine, and very rotten. I have been for thirteen or fourteen years carrying on the herring fishery in Fortune Bay, and during that time I have never known our Newfoundland fishermen to haul herrings on Sunday. If the American fishermen were permitted to bar herrings in the way that they were doing at

Long Harbour Beach, all the rest of the craft would be deprived of the best place in the harbor to haul herrings; and such a mode of fishing for herrings is most injurious to the fishery, and must in time ruin the herring fishery there. The Americans, in hauling their long seines, often removed the Newfoundland fishermen's nets when they came in their way. I have known the Americans last year to have herrings barred in for a fortnight. Barring kills a great many herrings, and makes those who are barred in very poor. I have seen the bottom covered with dead herring after the seine had been barred for a week. The American schooners heave out their ballast in the channel between Woody Island and the shore, and if not prevented, will soon destroy the anchorage there.

JOHN RUMSEY, his x mark.

Sworn before me at St. John's, this 9th day of February, A. D. 1878, having first been read over and explained.

(Signed) D. H. PROWSE,  
J. P. for Newfoundland.

(3.)

*Deposition of John Saunders.*

The examination of John Saunders, of Tickle Beach, Long Harbour, taken upon oath, and who saith:

In January last there were a great number, close on 100, schooners and boats fishing for herring, both American and Newfoundlanders. The Americans were employing the English to haul their seines for them. There were some English schooners who had seines also. One Sunday, I do not know the date, John Hickey laid out a seine, and was told by the English or Newfoundlanders to take it up, as it was Sunday, which he did. The Americans laid out their seines, assisted by the English employed by them. The Newfoundlanders told them to take them up, as it was not legal their fishing on that day, being Sunday; J. McDonald took his up. Jacobs upset his net into Farrel's seine, who was employed by him. Farrel was barring for the Americans, and was not allowed by Jacobs to haul his seine until the hard weather came. After Jacobs had upset his seine into Farrel's he took it up to shoot again, and threatened with the revolver any one who interfered. Then they told McCauley to take his up, but he didn't, so the people hauled it in and tore it up.

I don't know any man concerned in the destruction of the net that I could swear to but one, John Pitman, a servant of Samuel Pardy, who was at "Jack Fountain."

There was no other reason that I know for destroying nets but for fishing on Sunday, and because they would not take them up when they were told. The Americans never hauled a seine before that day; they always employed the English to use their seines, and bought fish from the English. The only reason that the Americans laid their seines out that day was because there were plenty of herrings, and no Englishman would haul them, being Sunday, excepting Hickey, who had been compelled to take his seine up.

Q. Where does Philip Farrel live?—A. In Bay-de-North, and so does Thomas Farrel.



Q. Was any obstruction or hindrance placed in the way of the Americans before or after that Sunday?—A. No.

Q. Did they remain in the harbour until the close of the season; until the herrings slacked away were any Americans compelled to leave the coast after this circumstance?—A. No; there was nothing to prevent their remaining, and they remained for some days, until the weather became soft, and there were no more herrings in the bay. Most of them left, but one American schooner remained about three weeks after that, when another lot of herrings came into the bay, and he filled up and went away the next fair wind. Jim Boy was the captain's name.

Q. Do you know any American of the name of Dago?—A. Yes; he has part in this seine. The Americans hauled their seine on the beach immediately in front of my property.

Q. Do you know the names of the schooners?—A. No.

Q. Do you know the names of the owners of the seine?—A. Yes; Captain Dago and McCauley.

Q. Do you know anything the Americans did by way of revenge?—A. The Americans, in revenge for the destruction of the net, afterwards drifted their vessels all about the bay or river with their anchors hanging, and so hooked and destroyed many nets, about fifty or sixty, I should think. The name of one of these captains was Smith—but I don't know the name of his vessel—and the other was Pool. We all believe that this was done in revenge. They were pretending to be at anchor where there was about fifty fathoms of water; but were drifting all over the bay and hooking the nets; there was no weather to cause them to drift. Our small boats were anchored off the beach. We had never any difficulty with the Americans before this, but were always on good terms with them.

(Signed) JOHN SAUNDERS, his x mark.

Sworn before me at Tickle Beach, Long Harbour, this 13th day of June, A. D. 1878.

(Signed) GEO. L. SULLIVAN,

*Captain and Senior Officer on the Coast of Newfoundland.*

(4.)

### *Deposition of Mark Bolt.*

The examination of Mark Bolt, of Tickle Beach, Long Harbour, taken upon oath, and who saith:

I am a native of Dorsetshire, England. I have been in this country twenty-one years, and have been fishing all that time. I have lived in this neighborhood fourteen or fifteen years, and at Tickle Beach since last fall. The ground I occupy (150 feet) was granted me for life by Government, and for which I have to pay a fee. There are two families on the beach: there were three in the winter. Our living is dependent on our fishing off this settlement. If these large American seines are allowed to be hauled it forces me away from the place.

One Sunday in January last John Hickey, Newfoundlander, came first and hove his seine out. Five Newfoundlanders came and told

him to take it up, and he did not; then others came and insisted upon it, then he took it up. If he had then refused to take it up it would have been torn up.

Then Jacobs, an American, came and laid his seine out and hauled about 100 barrels of herring in the big American seine, and capsized into Tom Farrel's seine—a Newfoundland fisherman employed by Jacobs and fishing for him.

Philip Farrel was also fishing for the Americans, being master of McCauley's seine. The Newfoundlanders then capsized Tom Farrel's seine of fish, who was only fishing for the Americans. After this Jim Macdonald, another American, threw out his seine. Then the people went and told Macdonald that he was not allowed to fish on Sundays, and he must take his seine up; and he took up his seine and carried it on board his vessel. Jacobs would not allow his seine to be touched, but drew a revolver. They went to McCauley, an American, who had laid his seine out for barring herring; this American also employed a Newfoundland to lay his seine out. The Newfoundlanders said it should not be done on a Sabbath day, and they resolved to tear up all the seines they could get hold of. They managed to seize McCauley's and tore it up. They would have torn up any they could have got at if laid out, whether English or American, because it was Sunday. The Americans do not bar fish. This was the first time I ever knew them to do so; they usually buy the fish from the Newfoundlanders, and also barter flour and pork for them, and I have never known anything to complain of against them previous to this.

Q. Did the American schooners continue to fish after the destruction of McCauley's seine?—A. Yes.

They (the Americans) continued to fish, and left about the usual time, the 10th March. I do not know any reason for the conduct towards the Americans except that they were fishing on Sunday. I do not know what became of the nets that were torn up; it was left on the beach for some days, and then taken away. I do not know who took it away; the Americans, perhaps, but I don't know.

The Americans were often set afterwards, but not on Sunday; the Americans did not leave off catching herring after this on other days. The English did not prevent the Americans hauling their seines, but the Americans usually employed the English to haul them, as their crews were not sufficient in number, and are not acquainted with the work. The American crews are employed salting and freezing the fish, while the English employed by them with the American seines are catching them. The seine torn up was being worked by an Englishman for McCauley, the American, namely, Philip Farrel.

Jacobs' seine was in the water a night and a day. I was not aware that it was illegal to haul or catch herring by or in a seine at that time of the year, nor that barring is prohibited at all seasons, nor that the seine must be shot and forthwith hauled, but have heard some reports to that effect.

The nearest magistrate is at St. Jacques, about 25 or 30 miles from this, and there is no means of communicating with him excepting by a sailing boat.



The seine that was destroyed belonged to men called Dago and McCauley, who, I believe, were each of them captains of schooners, but the names of the vessels I do not know.

(Signed) MARK BOLT.

Sworn before me at Tickle Beach, Long Harbour, this 13th day of June, A. D. 1878.

(Signed) GEO. L. SULLIVAN,  
*Captain and Senior Officer on the Coast of Newfoundland.*

(5.)

*Deposition of Richard Hendriken.*

The examination of Richard Hendriken, of Hope Cove, Long Harbour, taken upon oath, and who saith:

I have been nine years in Long Harbour. I was here in January last, when the American seine was destroyed. It was destroyed on account of barring herring on Sunday. I was watching their proceedings from the point opposite; they laid their seine out and went to haul it in because the English would not haul it in on Sunday, and the bay was full of fish. The fish would have remained. The Americans generally employ some Englishmen to work with their own crew; they don't generally lay out their own seines. Captain Dago and Samuel Jacobs would persist in hauling, and hauled once and barred them in Farrel's net. Farrel was working for him, and had been barring herrings for several days—perhaps about a fortnight—by the Americans' orders. I believe it is illegal to bar herrings; it destroys the fish, but we have no power to stop it. It is no good telling a magistrate; the Americans take no notice of them. The nearest magistrate to this place is at Harbour Briton, 25 or 30 miles off. The only thing to let people know what is right and what is wrong is to have a notice-board in each harbour, and some heavy fine imposed on law-breakers.

James Tamel is harbour-master.

I don't know if he is a special constable or not; but Mr. Enburn told me he was to see the Yankees did not heave their ballast over, and that their measures were correct, but they would not listen to him. They hove their ballast overboard, and had tubs 22 inches in depth instead of 16 inches; in these tubs they measured the fish they bought from the New foundlanders, and they would not alter them. The fish are sold to the Americans by the barrel. For 100 barrels it is usual to pay for 90, which is considered fair, but a flour barrel cut down to 16 inches in depth is the proper measure; they only cut them to 22 inches or more, and insist on having them filled. The vessels from St. John's and Halifax always take the proper size tubs, but the Americans constantly overreach us, and choose the most ignorant to deal with, or those who are not so sharp as themselves. They generally otherwise behave well, and we have never had any quarrel with them before, but have always been on good terms. If the natives did not see the laws carried out themselves there might as well be no laws, for there is often no one else to enforce it. It is

the only way I know, and is pretty well understood by both foreigners and natives.

(Signed) RICHARD HENDRIKEN, his x mark.

Sworn before me at Tickle Beach, Long Harbour, this 14th day of June, A. D. 1878.

(Signed) GEO. L. SULLIVAN,  
*Captain and Senior Officer on the Coast of Newfoundland.*

(6.)

*Deposition of Ambrose Pope.*

The examination of Ambrose Pope, of Stone Cove, Long Harbour, taken upon oath, and who saith:

I was at Tickle Beach on a Sunday in January last. I don't know the date. I saw the Newfoundlanders hauling a seine and leave it on the beach; it was torn in hauling it on shore. It was evening when I saw the seine hauled on the beach, and it was laying there when I left the beach.

I don't know if any was carried away. I don't know anything more about it. The Americans we thought had no right to haul their seines on Sunday.

(Signed) AMBROSE POPE, his x mark.

Sworn before me at Anderson Cove, this 15th day of June, A. D. 1878.

(Signed) GEO. L. SULLIVAN,  
*Captain and Senior Officer on the Coast of Newfoundland.*

(7.)

*Deposition of James Tharnell.*

The examination of James Tharnell, of Anderson's Cove, Long Harbour, taken upon oath, and who saith:

I am a special constable for this neighborhood; I did not see anything of the alleged outrage last January, but I heard something about it; I believe some of the men named Pope were on the beach, but which I do not know.

Q. Have you formed any opinion as constable as to the cause of the dispute?—A. Mr. Snellgrove, of the customs, and myself, from what we were informed of the circumstances, were of opinion that the Americans were acting illegally in shooting their seines, but notwithstanding that, nothing would have been said to them for that had it not been on the Sabbath day. The men forbid them hauling seines on the Sabbath day, and told them to take them up or they would take them up for them, and what annoyed them so much was that the Americans drew their revolvers; probably, if it had not been for the threat of the revolvers the seines would only have been taken up, and not torn. They asked him three times to take them up before they did so themselves.

The people were not aware that it was illegal to set the seines that time of the year, and were only prompted to their act by the fact that



it was Sunday. We all consider it to be the greatest loss to us for the Americans to bring those large seines to catch herring. The seines will hold 2,000 or 3,000 barrels of herring, and, if the soft weather continues, they are obliged to keep them in the seines for sometimes two or three weeks, until the frost comes, and by this means they deprive the poor fishermen of the bay of their chance of catching any with their small nets, and then, when they have secured a sufficient quantity of their own, they refuse to buy of the natives.

If the Americans had been allowed to secure all the herrings in the bay for themselves, which they could have done that day, they would have filled all their vessels, and the neighboring fishermen would have lost all chance the following week-days. The people believed that they (the Americans) were acting illegally in thus robbing them of their fish. If the natives had not defended themselves by enforcing the law, there was no one else to do it. I was sworn in as a special constable by Mr. Herbert, the magistrate of Harbour Briton, last October.

On the arrival of the Americans I showed my authority, signed by Mr. Herbert, and they laughed at it, and said it had no stamp, and they didn't, therefore, recognize it.

I told them the lawful size of a tub—sixteen gallons—and they said they required a brand on it. I have no means of branding tubs; there is no means to brand on the coast, and it is not the custom. I don't know if it is the custom at St. John's to brand them. I have cautioned the Americans about throwing ballast out inside Hoodey's Island, where it is very shallow; but they have continually done so notwithstanding up to this. There are now several shallow places there and in the cove, where the Americans have been in the habit of throwing out their ballast, and small vessels now, of twenty-eight to thirty tons, repeatedly ground on this ballast there thrown out by the Americans. I believe there was less thrown out last winter after I spoke to them about it; but I have no power, moral or otherwise, to enforce any rules, and they don't seem to care much about me.

(Signed) JAMES THARNELL, his x mark.

Sworn before me at Tickle Beach, Long Harbour, this 14th day of June, A. D. 1878.

(Signed) GEO. L. SULLIVAN,  
*Captain and Senior Officer on the Coast of Newfoundland.*

(8.)

*Deposition of George Snellgrove.*

The examination of George Snellgrove, of St. Jacques, Fortune Bay, taken upon oath, and who saith:

I am sub-collector of customs for the district of Fortune Bay. I went to Long Harbour on the 8th January, two days after the dispute between the Americans and Newfoundland fishermen had taken place.

Captains Jacobs and Dago informed me that an American seine had been taken up by the Newfoundland fishermen on the Sunday previous and destroyed; that the seine belonged to Dago and McCauley, and that they had other seines out, but they had taken

them up when they found that the other was destroyed. One of these captains said that the fishermen had threatened to take up the seine if they didn't themselves. Captain Jacobs showed me a revolver, and said that he had threatened them with it. I remonstrated with him for doing so, when he replied that I couldn't suppose that he was really going to use it; that he only did it to frighten them; he had taken care there were no charges in it. I said to him, "Do you suppose that you would have got off that beach alive if you had used it?" and he said he never intended to use it.

Captain Warren told me that on the fishermen coming to haul in the seine that Captain Dago hailed them to say that they would take the seine in themselves if they waited, and that he (Warren) said to Dago, "It is too late now; you ought to have done it when they told you first; they are too excited now."

I then communicated with the natives of the place, who related the circumstances, and gave their reasons that the Americans were fishing illegally, and would have secured the whole of the fish, which they considered part of their property, and that they would have been distressed for the winter. They told me that they had at first told them to take up their seines, and they refused; that Captain Jacobs had threatened them with a revolver, but, notwithstanding this, they had taken up one and destroyed it.

I saw Captain Jacobs several times afterwards, and in the course of conversation with him I said: "If I had been there you would not have been allowed to shoot your seine." "What!" he said, "could you prevent me?" I said "Yes; I should have seen the law carried out and taken your seine and boat, which you forfeited for breaking the law," and I told him I would take the fine as well of \$200, at which he said: "Do you think I care about paying the fine? I could pay the fine," by which I understood him to mean that the fine was not worth considering, as the quantity of fish would have more than paid for it.

Q. Was there any one in Long Harbour on the Sunday referred to who could have enforced the law and protected the interests of the fishermen?—A. No.

Q. Is it not illegal shooting seines at all at that time of the year?—A. There is an act to that effect, but it has never been carried out in Fortune Bay, nor are the natives aware of its illegality at that time of the year, nor would they have molested the Americans had it not been Sunday, and which they knew it to be not only the law, but the infallible custom to desist from fishing on that day.

Q. Has there ever been to your knowledge before quarrelsome disputes or ill-feeling between the Americans and native fishermen?—A. No, never; always on the best terms.

Q. How long did you remain in Long Harbour?—A. I remained till the 12th January.

Q. Did you observe during your stay in Long Harbour whether the three American captains remained and continued to fish or not?—A. I did, and I know that they continued to fish; they were not molested as far as I know.



Q. Was there anything to cause them to leave the harbour, or to cease fishing?—A. No, and they had not left it when I left. There were no further disputes to my knowledge afterwards.

GEO. THOS. SNELLGROVE,  
*Sub-Collector of Her Majesty's Customs.*

Sworn before me at St. Jacques, Fortune Bay, the 17th day of June, A. D. 1878.

GEO. L. SULLIVAN,  
*Captain and Senior Officer on the Coast of Newfoundland.*

(9.)

*Deposition of Silas Fudge.*

The examination of Silas Fudge, of Bellaram, Fortune Bay, taken upon oath, and who saith:

I am mate of my father's schooner. I witnessed the disturbance at Long Harbour on Sunday, the 6th January last. I am certain that it was on the 6th January it happened.

I saw the seines in the water—two of them American and one English. We told them to take them up.

John Hickey, the Englishman, took his up. McCauley, the American, who owned the other, refused to take his up. There was another seine, which I did not see, in the water, belonging to Captain Jacobs. He had his in the boat at the time. He had shot once and discharged his seine into Thomas Farrel's, who was working for him, and was going to shoot his seine out again. I saw it in the boat ready for shooting when the crowd came over. They first spoke to McDonald, and asked him if he would take his seine up, and he said, "Yes, if I am forced;" and they then went to Hickey and told him to take his up, and he took it up; then they went to McCauley and asked him to take his up, and he said he would not. They then told him that if he didn't they would take it up for him. They then went to Jacobs, and told him they would let go the herring out of the seine of Tom Farrel, who was an Englishman. Jacobs then drew a revolver, and threatened to shoot any man who touched his property. The crowd were very excited. I saw them haul McCauley's seine in and tear it up. That was the end of the row that day. Farrel had, during the previous week, secured herring in the American seine, and then had placed his own round them, and taken up the American's. This was done before Sunday. It was in this seine of Farrel's that Jacobs emptied his own seine.

Q. You knew that the American fish were in the Englishman's seine; why was Farrel's seine allowed to remain?—A. Because he had not shot it on the Sunday, but on the week-day.

Q. Are you aware that it was illegal to use seines to catch herrings that time of the year?—A. No; I don't know.

Q. Did you believe it to be lawful to use seines for herring that time of the year?—A. Yes, I thought so, as far as I could understand. I suppose the Americans thought, with reference to the destruction of the seine, that we did it in envy of them, but it wasn't; but it was from regard to the Sabbath, on which day we never fish.

Q. How far from the beach were the American seines shot?—

A. Close to the beach; the hauling lines were on the beach.

The Americans remained in the bay after the occurrence for several days; they were never molested or interfered with afterwards; they continued to fish until they left the harbour; they were not compelled to leave the harbour, but I believe they were unsuccessful on account of the bad weather and for want of frost.

SILAS FUDGE.

Sworn before me at St. Jacques, Fortune Bay, the 17th day of June,  
A. D. 1878.

(Signed)

GEO. L. SULLIVAN,

*Captain and Senior Officer on the Coast of Newfoundland.*

(10.)

*Deposition of John Cluett.*

The examination of John Cluett, of Bellaram, Fortune Bay, taken upon oath, and who saith:

I was in Long Harbour one Sunday in January last.

Q. Did you see anything of the quarrel between the Americans and other fishermen?—A. I did.

Q. Tell me what you know of it?—A. They commenced hauling herrings on Sunday, about midday. The first American seine shot was Captain Jacobs'. There were two more American seines shot. There was an Englishman working for the Americans who had a seine moored there for several days, but it was not shot or attempted to be hauled on the Sunday.

The first seine we came to was Captain McDonald's. They asked him if he was going to take his seine up. He said, "If we are forced to take it up we will;" and we told him if he didn't take it up we would take it up for him.

The next we came to was a man belonging to Fortune Bay, called John Hickey, an Englishman, and we told him to take up the seine, and he said he would take it up, and he did. The next we came to Peter McCauley, and we told him the same as the others, and he refused to take it up. Then we went on to Captain Jacobs, and when we got to him he was in his skiff, a little off the shore. He had just hauled herring and shot them into Farrel's seine, who was working for him. They remonstrated about breaking the law and fishing on Sunday. There was an altercation between us. He said he would defend his seine if they touched it in a threatening way. I don't know what he said. There was a great crowd, and he was in an awful rage, and I heard that he drew a revolver, but I didn't see it. He then took his seine on board. Then all the seines were taken up but Farrel's and McCauley's. Farrel's seine was not touched because it was not laid on that day, and they therefore let it alone, although Jacobs's fish were in it; but McCauley's seine was taken up and destroyed, and that is all I know.

Q. Did the American captain remain in the harbour after?—A. Yes; I think about a fortnight, but perhaps more. They continued to fish and haul herring on week-days but not on Sunday again.



Q. Were they ever molested or interfered with in any way subsequently or not?—A. Not to my knowledge; they remained there as long as they chose, and there was never any more dispute. I don't know that it is illegal to haul seines that time of the year. I have heard of the law, but I have never seen it carried out; it had nothing to do with this dispute. The only cause of it was on account of its being Sabbath. I never saw herrings hauled on a Sunday before, either by American or Englishman.

The Americans, by hauling herring that day when the Englishmen could not, were robbing them of their lawful and just chance of securing their share in them, and, further, had they secured all they had barred they could have, I believe, filled every vessel of theirs in the bay. They would have probably frightened the rest away, and it would have been useless for the English to stay, for the little left for them to take they could not have sold.

The Americans would have a better chance than the English any day on account of the size of their nets, but the English would have had their fair chance the next day, and they thought they were justified, in the absence of any proper authority or power to enforce the law, to defend their rights themselves. There is no power or authority to enforce the law on all parts of the coast, and none nearer to Long Harbour than about 30 or 40 miles.

If there was not a good feeling and mutual understanding between all fishermen, whether foreigners or Englishmen, there would be no law carried out or upheld at all, but there was always prior to this a very good feeling and a mutual understanding between the Americans and ourselves, and I don't know anything to prevent the same in future. After the destruction of McCauley's seine some of the American schooners, one of which was Peter Smith's, drifted about the harbor among the fishermen's nets when blowing hard, with their anchors hanging to their bows, and destroyed several nets. I don't know if this was done out of revenge or not. I don't think it was done purposely.

(Signed) JOHN CLUETT.

Sworn before me at St. Jacques, Fortune Bay, this 17th day of June, A. D. 1878.

(Signed) GEO. L. SULIVAN,  
*Captain and Senior Officer on the Coast of Newfoundland.*

(11.)

*Deposition of Charles Dagle.*

GLoucester, February 19, 1878.

I, Charles Dagle, master of the American schooner *Lizzie and Namari*, of Rockport, do on oath depose and say:

That I sailed from Gloucester on the 6th December, 1877, for Fortune Bay, Newfoundland, for a load of herring. The last year (1877) I had sold a seine and boat to parties in Newfoundland, and they were to supply me with herring in payment for the seine and boat. I arrived at Fortune Bay about the 19th December. I was at Long Harbour, Newfoundland, with my vessel on the 6th Jan-

uary. Saw the seines of the American schooners *New England* and *Ontario* destroyed by the fishermen of Newfoundland. There is a decided objection to using netted or gill-net herring for freezing purposes, as these herring die in a short time after being taken in gill-nets. When they are seined they can be kept alive on the radius of the seine and taken out alive when the weather is suitable for freezing, while the netted herring, being dead, must be salted or spoil; consequently the seined herring are the best for our purposes, and are what the American vessels want for our market. Knowing this fact, the Newfoundland fishermen had endeavored to obstruct in every way the taking of herring with seines, as they use principally gill-nets; they placed their nets, which are set permanently, so as to hinder the using of seines. On the 6th January, 1878, the herring had come inshore, so that they were inside the gill-nets, thus giving our people an opportunity to seine them without interfering with the gill-nets. On the Americans attempting to put their seines in the water the Newfoundland fishermen threatened to destroy them, and when our fishermen had taken their seines full of herring, the Newfoundlanders came down to the number of 200, seized and destroyed the seines, letting out the fish, and afterwards stole and carried off the remnants of the seines. On account of this violence and the obstructions placed in the way of my men operating the seine, I was unable to procure a cargo, and have returned without a herring. If I had been allowed the privilege guaranteed by the Washington Treaty, I could have loaded my vessel and all the American vessels could have loaded. The Newfoundland people are determined that the American fishermen shall not take herring on their shores. The American seines being very large and superior in every respect to the nets of the Newfoundlanders, they cannot compete with them. These seines are the mackerel seines which are used in summer for mackerel and are setting for herring. When they are plentiful we can take from 2,000 to 5,000 barrels. The seines and boats we use cost 1,200 dollars when new, and are too expensive for the generality of Newfoundland fishermen, and they would have no use for seines only during the herring season, while we can use them both summer and winter, and thus make them pay for their great cost.

My loss by these acts of violence, and being deprived of my rights under the Washington Treaty, is fully 5,000 dollars, which I claim as indemnity. The netted herring are strangled while caught by the head in the net, and the eyes turn red from suffocation. They will not keep so long as seined herring, which are free to swim inside the seine, and are dipped out alive. The netted herring will not sell in the New York market, while the seined herring preserve their bright appearance and sell rapidly.

(Signed) CHARLES DAGLE,

*Master of Schooner Lizzie and Namari.*

ESSEX, 38 :

GLOUCESTER, February 19, 1878.

Personally appeared Charles Dagle, master of schooner *Lizzie and Namari*, who subscribed and made oath to the foregoing statement.

Before me.

(Signed) . ADDISON CENTER,  
*Justice of the Peace.*



(12.)

*Deposition of William H. McDonald.*

GLOUCESTER, February 19, 1878.

I, William H. McDonald, master of the American schooner *William E. McDonald*, of Gloucester, do on oath depose and say:

That I have just returned from Newfoundland, where I have been for a load of herring. I was at Long Harbour, Newfoundland, when the seines of the schooners *New England* and *Ontario* were destroyed. I had gone on shore and was on the beach at the time. The Newfoundlanders were much excited because of our use of the large seines, which for the first time were used last winter there. The Newfoundland fishermen had sunk large rocks off the beach in order to catch the seines and tear them, and had put their gill-nets where they would obstruct the use of the seines. These means failing, as the herring were close inshore, they took to personal violence, and destroyed one seine completely, and made the others take them up and release the fish. I had a seine, but was not allowed to use it. The nets they placed in the way and kept there only for the purpose of obstructing our operations with seines, as they took no herring there, but let the nets remain till they rotted. I can fully endorse the statement of Captain Dagle in all particulars. My vessel is a first-class vessel, and with the time and expense, and with the loss of herring, I have sustained a loss of fully 5,000 dollars to myself and owners, and I claim that, under the Treaty of Washington, I have a right to the herring fisheries and claim indemnity for this severe loss.

(Signed) WILLIAM H. McDONALD.

ESSEX, ss:

Personally appeared William H. McDonald and subscribed and made oath to the above statement.

Before me.

(Signed) AARON PARSONS,  
*Justice of the Peace.*

(13.)

*Deposition of James McDonald.*

GLOUCESTER, February 19, 1878.

I, James McDonald, master of the American schooner *F. A. Smith*, of Gloucester, do on oath depose and say:

That the said schooner was chartered by George W. Plumer and others, of Gloucester, for a voyage to Newfoundland for herring. I sailed from Gloucester on the 29th November, 1877, and arrived at Long Harbour, Newfoundland, on or about the 15th December, 1877. I carried a large purse seine, such as is used to take mackerel. The seine will take 4,000 barrels of fish. I employed Newfoundland fishermen to operate the seine. I set my seine twice, but without catching anything, as my seine was torn by rocks that had been left off the beach. On the 6th January the herring made their appearance in great numbers, and the opportunity to take a large haul was improved

by my men, and we took at least 1,000 barrels, enough to load my vessel and one other. The Newfoundland fishermen came off in their boats and told me to take my seine up, or they would take it up for me, and that they would cut it up. There were about 200 men engaged in this violence, and my own crew consisting of six men I could not resist, but was obliged to take up my seine. I saw the seines of the schooners *New England* and *Ontario* destroyed, and knew that mine also would be destroyed if I did not take it up. My seine was not attached to the shore when they came off, and the attack on me was made in boats. After destroying the other seines they all made for me, and my only safety was to gather up my seines. I lost all my fish, and the Newfoundland fishermen put all the obstructions they could in the way to prevent the use of our seines after that. From my knowledge of the facts I do say that the Newfoundland fishermen are determined to prevent American fishermen from using the shore fisheries. I consider that the loss to the vessel and the charter party at not less than 5,000 dollars, and under the Treaty of Washington I have been deprived of my rights as an American citizen, and full indemnity should be allowed for the outrage. I have read the statement of Captain Dagle, and know it to be true in all its particulars. The effect of this treatment will be to destroy the American fishing for herring at Newfoundland. There are annually about 100 voyages by American vessels made for herring to Newfoundland. The Newfoundland fishermen were taking herring on the same day the outrages before stated occurred.

(Signed) JAMES McDONALD.

ESSEX, ss:

GLOUCESTER, February 20, 1878.

Personally appeared the above-named James McDonald, master of the schooner *F. A. Smith*, who subscribed and made oath that the foregoing statement is true.

Before me.

(Signed) ADDISON CENTER,  
Justice of the Peace.

(14.)

*Deposition of Charles H. Nute.*

GLOUCESTER, February 19, 1878.

I, Charles H. Nute, master of the American schooner *Edward E. Webster*, of Gloucester, do on oath depose and say:

That I have just returned from Newfoundland, where I have been for a load of herring. I went for the purpose of co-operating with other American vessels in the use of their seines in taking herring. I was at Long Harbour, and saw the destruction of the seines of the American schooners *New England* and *Ontario*. I have seen the statement of Captain Dagle, of the American schooner *Lizzie and Namari*, and substantiate all he has stated. I have returned without a herring for the same reasons. My actual loss in time of vessel and crew, with herring I should have bought had I not been prevented by the inhabitants of Newfoundland, is fully 5,000 dollars; and, owing to being deprived of my rights under the Washington treaty,



I hereby claim that amount as indemnity for the wrong done me and the owners of the vessel.

(Signed) CHARLES H. NUTE,  
Master Schooner *Edward E. Webster*.

ESSEX, ss:

GLOUCESTER, February 20, 1878.

Personally appeared Charles H. Nute, master of schooner *Edward E. Webster*, who subscribed and made oath that the foregoing statement is true.

Before me.

(Signed) ADDISON CENTER,  
Justice of the Peace.

(15.)

*Deposition of David Malanson.*

GLOUCESTER, February 20, 1878.

I, David Malanson, master of the American schooner *Crest of the Wave*, of Gloucester, Massachusetts, do on oath depose and say:

That I sailed from Gloucester on the 8th December, 1877, on a voyage to Newfoundland for herring. I arrived at Long Harbour, Newfoundland, on the 23d December, 1877. I was interested in a seine carried by the schooners *New England* and *Ontario*. I was at Long Harbour on the 6th January, 1878, and was on the beach when the Newfoundland fishermen destroyed the seine belonging to these vessels. The herring did not strike inshore until that day, and as it is very uncertain how long they will remain, it is imperative, for successful prosecution of the business, to take them when they are inshore. By means of our large purse seines we can inclose the herring and keep them alive a month, if necessary, as we need to have freezing weather when we take them out to freeze them, to keep them fresh until we get them to market. On this occasion the herring were entirely inshore of the Newfoundland gill-nets, and as the sequel proved, if we did not take them then and there we should lose the season catch. The seines were set in no way interfering or injuring the gill-net fishing, and inclosed and held certainly 2,000 barrels of herring, enough to load four vessels. Over 200 men came down to the beach, seized the seine, let out the fish, pulled the seine on shore, tearing and cutting it to pieces with knives. The crews operating the seines were powerless against so many; and after they had destroyed this seine they went for the other American seines, shouting and gesticulating, saying: "Tear up the damned American seines." All of the vessels would have been loaded with herring if the Americans could have used their seines.

My loss by this outrage is not less than 5,000 dollars, which has been taken from me despite the provisions of the Washington treaty, and which I claim as indemnity.

The Newfoundland fishermen have for years been in the habit of selling all the herring to American vessels. I have been there eight years, and I have always bought my herring, or engaged the Newfoundlanders to take them for me, paying them in cash. This has been the universal practice of American vessels. This year we car-

ried the large mackerel seines, which we use in summer for taking mackerel. These seines will take from 2,000 to 5,000 barrels at a haul, and the herring are better taken in this way. As most of the Newfoundlanders fish with gill-nets, our manner of seining would take away from them the monopoly of the herring trade, and hence the feeling which produced the outrage on our vessels. It is apparent that they will obstruct any American fishery on their shores, and are not men who would know much about rights or privileges under a treaty. I should say that there are at least 100 cargoes of herring taken from Newfoundland yearly by American vessels, and as things are now it would be useless for American vessels to go there for herring unless they bought the herring from the inhabitants at whatever price they may see fit to ask. This American trade has been a great benefit to Newfoundland, and the change in the manner of taking herring will greatly reduce the amount of money paid them for herring. Only three vessels of eighteen that were there got any herring whatever. Captain Jacobs, of the *Moses Adams*, held his seine with revolvers, and, being a native of Newfoundland, was allowed to take in the herring he had taken. The feeling was very intense and bitter against the Americans. The Newfoundland fishermen were catching and taking herring with their nets and boats on the same day.

(Signed) DAVID MALANSON,  
*Master Schooner Crest of the Wave.*

ESSEX, ss:

Personally appeared before me David Malanson, and subscribed and made oath to the above statement.

(Signed) AARON PARSONS,  
*Justice of the Peace.*

(16)

*Deposition of Edward Stapleton.*

GLOUCESTER, February 21, 1878.

I, Edward Stapleton, master of the American schooner *Hereward*, of Gloucester, do, on oath, depose and say:

That I have just arrived from Newfoundland, where I have been for a load of herring. I was at Long Harbour, Newfoundland, when the Newfoundland fishermen destroyed the seines of the American schooners *New England* and *Ontario*, and saw the whole transaction. I carried a seine with me, and employed Newfoundland fishermen to operate it for me. The first time they set it for me they put it out in a strong tideway, and utterly destroyed it, and after that I had to depend on the other American seines. This was the understanding among the American captains, that we were to work together and load all our vessels. The setting of the seines on the 6th January did not interfere in any way with their nets or fishing. I think there is a local regulation that does not allow the Newfoundland fishermen to fish on Sundays; but the first seine (a small one) set on that day was one owned and operated by the natives, and they were picking their nets and boating their herring ashore all day. On the arrival of the American fleet the Newfoundlanders put their nets where they would obstruct our sailing, but on this day the herring were away



inside of their nets, giving us the first chance and only opportunity we had to seine or get herring. Enough were taken, and could have been taken, that day to have loaded the fleet. After that day there was no opportunity to take any. Newfoundland nets were placed where they never took a fish, and placed only for the purpose of preventing our seining. My loss to vessel and owners is not less than 5,000 dollars, and I claim indemnity to that amount. This loss is owing entirely to the hostile acts of the Newfoundland fishermen.

E. STAPLETON.

(17.)

*Deposition of Charles Dagle.*

GLOUCESTER, December 10, 1878.

I, Charles Dagle, master of the American schooner *Lizzie and Namari*, of Rockport, district of Gloucester, do, on oath, depose and say, that I know Mr. Bolt, who resided in a hut or shanty near Tickle Beach, Newfoundland; that I was there on the 6th January, 1878, and saw the hostile acts of the British fishermen. Mr. Bolt's hut is about 150 yards back from the beach. I have been to Newfoundland fourteen successive years, and never heard of any persons claiming any rights on the beach, everybody using it in common. The three huts there are in the nature of squatter property, used only in the winter. Mr. Bolt never made any claim that I knew of; and the American seines were not used within 300 yards of Bolt's place, except where the seines were hauled on the beach by British fishermen and destroyed. The seines that were obliged to be taken up were 500 yards or more from Bolt's place. The seine of the *F. A. Smith*, Captain McDonald, was one-fourth of a mile away. Mr. Hickey, a resident of Fortune Bay, had his seine nearest to Bolt's house. Mr. Hickey's seine was the first seine set on the 6th January, 1878, and the British fishermen attacked him as well as the Americans,

(Signed) CHARLES DAGLE.

MASSACHUSETTS, *Essex*, ss:

GLOUCESTER, December 12, 1878.

Personally appeared Charles Dagle and made oath to the truth of the above statement.

Before me.

[SEAL.]

AARON PARSONS, *Notary Public.*

(18.)

*Deposition of Willard G. Poole.*

GLOUCESTER, December 10, 1878.

I, Willard G. Poole, master of the American schooner *Maud and Effie*, of Gloucester, do on oath depose and say that I know Mr. Bolt, and also the location of his hut at Tickle Beach, Newfoundland; that I was there on the 6th January, 1878, and saw and know of the operations of the American seines; that the hut of Mr. Bolt is fully 150 yards back from high-water mark from the beach; that I never heard or knew of any individual or body of men claiming any pecul-

iar or particular rights on this beach, nor was any one ever hindered from fishing, except on the occasion of the 6th January, 1878, to my knowledge. There was no seine used by the Americans at any time on the beach or within 400 yards of Mr. Bolt's hut, except the seines captured by the British fishermen, which were hauled on to the beach by them (the British fishermen), and cut to pieces and destroyed.

(Signed) WILLARD G. POOLE.

ESSEX, ss:

GLOUCESTER, *December 11, 1878.*

Personally appeared before me the within-named Willard G. Poole, who subscribed and made oath that the within statement is true.

(Signed) ADDISON CENTER,  
*Justice of the Peace.*

(19.)

*Deposition of Michael B. Murray.*

I, Michael B. Murray, master of the American schooner *Mary M.*, of Gloucester, do on oath depose and say that I know Matthew Bolt, at Tickle Beach, Newfoundland; have known him to have a shanty there, and lives there winters, for the past four years. I never heard or knew of Mr. Bolt, or any other person, claiming any peculiar or particular rights on this beach, nor exercising any authority there, except the action of the mob on the 6th January, 1878. Mr. Bolt's shanty is about 150 yards from high-water mark. The American seines were operated more than 400 feet and due south along the beach from Bolt's hut.

(Signed) MICHAEL B. MURRAY.

MASSACHUSETTS, *Essex, ss:*

GLOUCESTER, *December 23, 1878.*

Sworn to this 23d day of December, A. D. 1878.

Before me.

[L. s.]

AARON PARSONS, *Notary Public.*

(20.)

*Deposition of Michael B. Murray.*

I, Michael B. Murray, of Gloucester, master of the American schooner *Mary M.*, do hereby on oath depose and say that I have invariably made good voyages to Newfoundland, and, with the exception of 1876, have made a clear profit, over and above all expenses, of at least 3,500 dollars for each voyage.

In the year 1875 I made 5,300 dollars, clear of all expense, on my voyage to Newfoundland for herring. In 1874 I made 5,500 dollars, clear of all expense.

In the year 1876 I had a cargo of 1,445 barrels of salted herring, was very late in the season, and cleared only 2,000 dollars.

(Signed) MICHAEL B. MURRAY.



MASSACHUSETTS, *Essex*, ss:GLOUCESTER, *December 23, 1878.*

Personally appeared M. B. Murray, and made oath to the truth of the above statement.

Before me.

[SEAL.]

AARON PARSONS, *Notary Public.*

(21.)

*Deposition of Peter Smith.*GLOUCESTER, *February 5, 1878.*

I, Peter Smith, of Gloucester, master of the American schooner *Charles C. Warren*, of Gloucester, do on oath depose and say that I was at Tickle Beach, Fortune Bay, Newfoundland, on the 6th January, 1878; that I had been to Labrador, from thence to Bay of Islands, and thence to Fortune Bay for a load of herring. On the morning of the 6th January, 1878, herring made their appearance in close proximity to the shore in great abundance. I was provided with two seines with which to take herring, and should have loaded my vessel and others on that day. I had my seine in the boat, and was preparing to use it when the attack was made on the other American seines, and I saw them destroyed, and I found that the mob of 200 or 300 of the British fishermen were determined to destroy every seine, and I did not dare put my seine in the water. After this time I bought of the British fishermen about 400 barrels of herring, paying 1 dol. 40 c. per barrel. My vessel would carry 1,300 barrels, all of which I could have taken on the 6th January at little or no cost to myself. I was about a fortnight buying 400 barrels of herring. I consider that my loss was at least 3,000 dollars, in addition to the expense of the voyage, by the hostile acts of the British fishermen.

(Signed) PETER SMITH.

STATE OF MASSACHUSETTS, *Essex*, ss:GLOUCESTER, *December 14, 1878.*

Personally appeared Peter Smith, and made oath to the truth of the above statement signed by him.

Before me.

[L. S.]

AARON PARSONS, *Notary Public.*

(22.)

*Official statement of Newfoundland herring fishery.*

I, Fitz J. Babson, collector of customs for the district of Gloucester, do certify that the following-named schooners were employed in the Newfoundland herring fishery during season of 1877 and 1878:

Schooners.	Tons.
Herbert M. Rogers	78
Moses Adams	100
John W. Bray	83
Wildfire	109
Edward E. Webster	99
Hereward	90

Schooners.	Tons.
Bunker Hill	101
Landseer	99
Isaac Rich	92
Ontario	91
New England	86
Frank A. Smith	77
Wm. E. MacDonald	98
Moro Castle	89
Bonanza	137
Jennie A. Stubbs	198
Lizzie and Namari	94
Crest of the Wave	71
Moses Knowlton	111
Maud and Effie	85
Fred. P. Fye	85
Mary M.	102
Maud B. Wetherell	108
Cunard	75
Charles C. Warren	109
Bellerophon	86
Total	26 vessels.

*Vessels employed during season of 1878 and 1879 in Newfoundland fisheries.*

Schooners.	Tons.
John S. McQuinn	82
Falcon	72
New England	86
Rattler	83
Wildfire	109
Bunker Hill	101
Isaac Rich	92
Centennial	116
Total	8 vessels.

Witness my hand and seal this 10th day of January, A. D. 1879.

[SEAL.]

F. J. BABSON, *Collector.*

*Sir E. Thornton to Earl Granville.*

[Extract.]

WASHINGTON, May 24, 1880.

(Received June 5.)

During a conversation which I had with Mr. Evarts at the State Department on the 20th instant I spoke to him about the Fortune Bay affair, and expressed some surprise at the step which the President and he had recommended to Congress, to the effect that the import duties upon fish and fish-oil, the produce of the British provinces, should be re-imposed as they existed before the Treaty of Washington. I stated that it appeared to me that this was an unfriendly step, and, if carried out by Congress, would render an agreement upon the question at issue much more difficult than it would otherwise have been. Previously to the transmission of the President's message, I should have had great hopes that an arrangement might have been arrived at; but, when it was attempted to put upon Her Majesty's Government a pressure to which, under similar circumstances, the United States' Government would have certainly objected, it did not seem as if the latter was desirous of finding a solution of the question.



I also pointed out to him that the Colonies of Newfoundland and Prince Edward Island had allowed American fishermen the privilege of fishing in their waters very shortly after the conclusion of the Treaty of Washington, although the Act of Congress relieving fish and fish-oil, the produce of Prince Edward Island, from import duties in the United States, was not passed till the 1st March, 1873, and Newfoundland was not admitted to the same immunity till May, 1874, and although United States' citizens had enjoyed the right of fishing in the waters of Prince Edward Island and Newfoundland, their Government had never consented to reimburse the duties which had been paid on the fish and fish-oil imported from those Colonies into the United States during that time.

Mr. Evarts denied emphatically that he had wished to recommend a measure which could be thought to be unfriendly towards her Majesty's Government; nor did he consider that it was so, or that it could be viewed in that light. He said that he had in September 1878 pointed out to Her Majesty's Government that the question was a serious one, and that it was the opinion of the United States' Government that a false construction had been given to the Treaty, to the prejudice of the United States' fishermen. He had maintained from the beginning of the discussion that the right of fishing given by the Treaty was free from all restrictions which might have been imposed upon native fishermen by local laws either anterior or subsequent to the date of the Treaty. He thought that Her Majesty's Government had not sufficiently considered the gravity of the case, had paid but little attention to it, and had unnecessarily delayed replying to the representations of the United States' Government. He asserted that until the season of 1878 no American fishermen had visited the coasts of Newfoundland for the purpose of fishing, and that when they did so, they had met with such a reception that until an answer should be received from Her Majesty's Government they had not ventured to repeat the visit. This answer had now arrived, just as the fishermen were preparing their equipments for this season, and were anxious to know whether they would be allowed to fish on the coasts of Newfoundland. But Lord Salisbury in his note of the 3rd ultimo had maintained that in the affair at Fortune Bay the Americans had violated both the local laws and the provisions of the Treaty, and that the native fishermen were therefore justified in attacking them, and preventing them from pursuing their ordinary mode of fishing. It was therefore impossible that, as the natives were thus encouraged to resist the rights of the Americans, the latter could again expose themselves to such losses as they had suffered in Fortune Bay.

It would have been very different, Mr. Evarts argued, if the authorities had taken the matter in hand, and if the question had been settled by a Court of Justice, but that it could not be that American fishermen should be exposed to the violence of a mob, and he expressed his surprise that Her Majesty's Government should have justified the means which were used for preventing Americans from enjoying their rights under the Treaty.

Under these circumstances, as it appeared that Her Majesty's Government had finally determined to interpret the Treaty in a manner entirely at variance with the expressed opinion of the United States' Government, and to justify the Newfoundland fishermen in taking

the law into their own hands and forcibly preventing American fishermen from exercising the rights to which their own Government considered them entitled, Mr. Evarts declared that there was no ground for the charge which I had made, that he was now the first to recommend to Congress a violation of the Treaty. On the contrary, he maintained that it was we who had allowed and sustained an infraction of the Treaty by the Newfoundland fishermen, looking at the interpretation given to it by the United States. There was then nothing left but one of two things: either to protect the American fishermen by the presence of men-of-war, which might have led to a conflict, or to re-impose the duty on fish, the taking off of which had been part of the price paid by the United States for the free enjoyment of the right of fishing.

I asked Mr. Evarts whether he could conscientiously assert that, if British subjects had availed themselves of the privilege of fishing on the United States' coasts, they would have been allowed advantages, either as to the mode or time of fishing, over the native fishermen? He replied that if the former had attempted to take any such advantages, the United States' Government would immediately have recommended that the same rights should be allowed to the natives, "But," I said, "such a step would have led to the entire destruction of the fisheries." This idea Mr. Evarts ridiculed; indeed, it seems to be the firm conviction of those in this country who have most studied the matter, that no amount of catching will lead to any perceptible diminution in the quantity of fish; but that there are other causes, not yet well understood, arising from local circumstances, storms, &c., which occasionally drive the fish away from the points which they have been in the habit of visiting.

Mr. Evarts thinks that there has been unnecessary delay in replying to his representations, and that sufficient attention has not been paid to his arguments; and that Lord Salisbury's note of the 3rd ultimo seemed to imply that the Newfoundland fishermen were justified in their attack upon the Americans, and would be encouraged to a repetition of similar conduct on future occasions.

There is also a strong desire on the part of the United States' Government, in view of the approaching end of the term for which fishing rights were granted by the Treaty, that it should not be supposed that the value which has been assigned to the fisheries by the Treaty and the Halifax Award is one which can ever be admitted or acknowledged by the United States as a precedent for any future arrangement.

I had the honour to transmit copies of the President's Message to Congress, accompanied by Mr. Evarts' Report upon the subject in my despatch of the 18th instant. The papers which were transmitted with Mr. Evarts' Report have not yet been printed.

I also inclose copies of a bill which was submitted to the House of Representatives on the 18th instant by Mr. Loring, a member from Massachusetts, which proposes that Collectors of Customs should be instructed to collect on fish and fish-oil the duties imposed before the Act of the 1st March, 1873; and that from the duties so collected the sum of 125,000 dollars should be set apart for the compensation of the United States' fishermen "who were driven from Fortune Bay on the 6th January, 1878." The Bill was referred to the Committee on



Foreign Affairs, by which I understand that it has not yet been taken into consideration.

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*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE, *June 9, 1880.*

SIR: I had to-day an interview with the United States' Minister at this Court respecting the Fortune Bay affair.

Mr. Lowell stated that there was a much stronger and deeper feeling on the other side of the Atlantic upon this question than was appreciated here. There was, he said, a feeling that a wrong had been done which ought to be redressed.

We agreed that this was a reason why both Governments should try to settle the question.

I observed that the present Government had not their reputation to make as to a wish to act in a conciliatory manner towards the United States, but that we could make no concession which could not be made with perfect justification.

I then asked Mr. Lowell whether he had any suggestions to make. He replied, "none;" that his instructions were to conform his language to that of Mr. Evarts' note. I inquired whether it would not be possible to separate the two questions of the interpretation of the Treaty and of the attack upon the American fishermen. He replied that he feared it might be too late to do this, but that, at my request, he would be prepared to ask the question.

Mr. Lowell added, not officially, but only as his personal opinion, that there would be no precipitate action on the part of the United States. The President, he said, had power to act, but the moment for doing so was at his own discretion.

We finally agreed to renew our conversation upon this subject at an early date.

I am, &c.

(Signed) GRANVILLE.

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*Mr. Lowell to Earl Granville.*

UNITED STATES' LEGATION,  
*London, June 12, 1880.*

(Received June 12.)

MY LORD: Referring to my conversation with your Lordship on the 9th instant, I have the honour to acquaint you that I took pleasure in communicating by cable the next day to my Government the friendly sentiments of your Lordship in respect to the differences between the two countries on the Fishery question.

I have this morning received a telegram from Mr. Evarts, by which he desires me to communicate his great gratification at the expression by your Lordship of the friendly disposition of the British Cabinet, a disposition which, he states, he should have been ready to assume from the public character of its members. He adds that the President will be quite ready to entertain any considerations which may be presented to the Secretary of State to relieve the question of

the fisheries from its present difficulties, and that the Bill now pending before Congress extends to the President adequate discretionary power to meet an accord between the two Governments respecting the fishery rights of the United States under the Treaty, should such an accord be established during the recess of Congress.

I have, &c.

(Signed)

J. R. LOWELL.

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*Earl Granville to Mr. Lowell.*

FOREIGN OFFICE, *October 27, 1880.*

SIR: Her Majesty's Government have carefully considered the correspondence which has taken place between their predecessors and the Government of the United States respecting the disturbance which occurred at Fortune Bay, on the 6th of January, 1878, and they have approached this subject with the most earnest desire to arrive at an amicable solution of the differences which have unfortunately arisen between the two governments on the construction of the provisions of the treaties which regulate the rights of the United States fishermen on the coast of Newfoundland.

In the first place, I desire that there should be no possibility of misconception as to the views entertained by Her Majesty's Government respecting the conduct of the Newfoundland fishermen in violently interfering with the United States fishermen, and destroying or damaging some of their nets. Her Majesty's Government have no hesitation in admitting that this proceeding was quite indefensible, and is much to be regretted. No sense of injury to their rights, however well founded, could, under the circumstances, justify the British fishermen in taking the law into their own hands and committing acts of violence, but I will revert by and by to this feature in the case, and will now proceed to the important question raised in this controversy, whether, under the treaty of Washington, the United States fishermen are bound to observe the fishery regulations of Newfoundland in common with British subjects.

Without entering into any lengthy discussion on this point, I feel bound to state that in the opinion of Her Majesty's Government the clause in the treaty of Washington which provides that the citizens of the United States shall be entitled, "in common with British subjects," to fish in Newfoundland waters within the limits of British sovereignty, means that the American and British fishermen shall fish in these waters upon terms of equality, and not that there shall be an exemption of American fishermen from any reasonable regulations to which British fishermen are subject.

Her Majesty's Government entirely concur in Mr. Marcy's circular of the 28th of March, 1856. The principle therein laid down appears to them perfectly sound, and as applicable to the fishery provisions of the treaty of Washington as those of the treaty which Mr. Marcy had in view. They cannot, therefore, admit the accuracy of the opinion expressed in Mr. Evarts's letter to Mr. Welsh, of the 28th of September, 1878, "that the fishery rights of the United States conceded by the treaty of Washington are to be exercised wholly



free from the restraints and regulations of the statutes of Newfoundland," if by that opinion anything inconsistent with Mr. Marcy's principle is really intended. Her Majesty's Government, however, fully admit that if any such local statutes could be shown to be inconsistent with the express stipulations, or even with the spirit of the treaty, they would not be within the category of those reasonable regulations by which American (in common with British) fishermen ought to be bound, and they observe, on the other hand, with much satisfaction, that Mr. Evarts, at the close of his letter to Mr. Welsh, of the 1st of August, 1879, after expressing regret at "the conflict of interests which the exercise of the treaty privileges enjoyed by the United States appears to have developed," expressed himself as follows:

"There is no intention on the part of this [the United States] government that these privileges should be abused, and no desire that their full and free enjoyment should harm the colonial fishermen.

"While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the treaty of 1871 are to be maintained, the United States Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interest by a just proportion of advantages and profits."

Her Majesty's Government do not interpret these expressions in any sense derogatory to the sovereign authority of Great Britain in the territorial waters of Newfoundland, by which only regulations having the force of law within those waters can be made. So regarding the proposal, they are pleased not only to recognize in it an indication that the desire of Her Majesty's Government to arrive at a friendly and speedy settlement of this question is fully reciprocated by the Government of the United States, but also to discern in it the basis of a practical settlement of the difficulty, and I have the honor to request that you will inform Mr. Evarts that Her Majesty's Government, with a view to avoiding further discussion and future misunderstandings, are quite willing to confer with the Government of the United States respecting the establishment of regulations under which the subjects of both parties to the treaty of Washington shall have the full and equal enjoyment of any fishery which, under that treaty, is to be used in common. The duty of enacting and enforcing such regulations, when agreed upon, would of course rest with the power having the sovereignty of the shore and waters in each case.

As regards the claim of the United States fishermen to compensation for the injuries and losses which they are alleged to have sustained in consequence of the violent obstruction which they encountered from British fishermen at Fortune Bay on the occasion referred to, I have to state that Her Majesty's Government are quite willing that they should be indemnified for any injuries and losses which, upon a joint inquiry, may be found to have been sustained by them, and in respect of which they are reasonably entitled to compensation; but on this point I have to observe that a claim is put forward by them for the loss of fish which had been caught, or which, but for the interference of the British fishermen, might have been caught by

means of strand fishing, a mode of fishing to which, under the treaty of Washington, they were not entitled to resort.

The prosecution by them of the strand fishery being clearly in excess of their treaty privilege, Her Majesty's Government cannot doubt that, on further consideration, the United States Government will not be disposed to support a claim in respect of the loss of the fish which they had caught or might have caught by that process.

I have, &c.,

GRANVILLE.

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*Mr. Evarts to Mr. Lowell.*

No. 109.]

DEPARTMENT OF STATE,  
Washington, February 4, 1881.

SIR: Inclosed herein you will receive the affidavits of the masters of two United States fishing vessels, detailing the acts of violence by which they have been prevented from exercising their rights of fishing in certain Newfoundland waters.

You will observe that in these occurrences no questions arise as to the character or force of local legislation. They exhibit simply and distinctly the determination of the inhabitants of Newfoundland that the fishermen of the United States shall not be permitted to exercise the right of fishing guaranteed them by the treaty of Washington, but shall be compelled to purchase from provincial fishermen the bait which they are clearly entitled to catch.

There is no question here of the size of the meshes of the seines, of the right of fishing at limited periods, of the use of the strand as auxiliary to legitimate fishing. It is simply the denial by force of the exercise of a right which is not disputed, but which is denied because it interferes with the profits of provincial fishermen. There is no pretense of the interference of lawful authority, general or local, but the undisguised use of mob violence to prevent the exercise of an undoubted right secured by treaty to our fishermen.

You will bring these complaints immediately to the attention of Her Britannic Majesty's Government, and in doing so you will say that the Government of the United States sees with a dissatisfaction to which it is unwilling to give full expression this repeated and continuous invasion of the rights of its citizens; that this rude and persistent opposition to the exercise of rights guaranteed by treaty, and liberally paid for, is practically an abrogation of the very provisions which the treaty was intended to secure, and that the Government of the United States cannot permit the rights and interests of its citizens to be thus subjected to the ill-temper and unlawful violence of an excited mob.

It can make no difference that these particular proceedings did not culminate in acts of personal injury or in the destruction of property. This has only been avoided by the fact that the United States fishermen, in a spirit of forbearance which cannot be too much commended, but which cannot be always anticipated, have yielded to an exhibition of force which they had not the power to resist.

The Government of the United States cannot reject the conviction that the protracted delay of Her Majesty's Government in the matter



of the disturbances at Fortune Bay has strengthened the impression of the provincial fishermen that the course of Her Majesty's Government had shown no severe condemnation for the violent methods which have been pursued to defeat a competition which was fairly purchased.

It is impossible that this condition of things should be looked upon with indifference by either government. The Government of the United States cannot believe that Her Majesty's Government would prefer that the Government of the United States should by the exhibition or exercise of force in the provincial waters maintain the obligations of the treaty of Washington, rather than that by the exercise of the power of the British Government our fishermen should be secured in the use of their treaty rights; and yet, unless some prompt remedy be found, the fishermen of the United States must abandon entirely their fishing rights upon the shores of Newfoundland, or they must enforce their rights by methods which will necessarily threaten, first the local peace, and then the amicable relations of the two countries.

You will say further that the Government of the United States earnestly presses these complaints upon the immediate attention of Her Majesty's Government for that fair and full compensation to which the United States fishermen are entitled for this violent interruption of their lawful industries, and in this connection you will impress upon Her Majesty's Government that the immediate and direct loss of cheap bait cannot be accepted as the measure of damages in these cases. These repeated infractions of treaty obligations have disorganized the whole fishing industry which the treaty was intended to protect. No vessel can calculate with certainty whether she will be allowed to catch her own bait or forced to purchase it, and so a whole cruise may be rendered profitless by this denial of the right to procure bait. But independent of this pecuniary advantage, Her Majesty's Government cannot surely deny that this systematic demonstration of violence against citizens of the United States pursuing a lawful industry is in itself cause of serious complaint and fair indemnity.

You will present these views in your own manner to Lord Granville, but if you find it necessary to impress upon Her Majesty's Government the earnestness of the Government of the United States, you are at liberty to read him this dispatch confidentially, as in the exercise of your own discretion, without express instructions from your government to that effect.

I am, &c.,

WM. M. EVARTS.

[Inclosure No. 1.]

*Deposition of John Dago.*

*November 18, 1880.*

(Received February 2, 1881.)

I, John Dago, master of the American schooner *Concord*, of Gloucester, Mass., do, on oath, depose and say that I left Gloucester on the 1st of April, 1880, for a trip to the Grand Banks. Our first baiting was at Freshwater Bay, Newfoundland, buying capelin and ice to the amount of twenty-five dollars. On the 9th of August, 1880, we went into a cove in Conception Bay, called Northard Bay, for squid. I put out four dories and attempted to catch my bait with the squid jigs or hooks used for that purpose. My men went into

the immediate vicinity of where the local shore boats were fishing for squid, but in a short time they returned and reported to me that they were not allowed to fish by the men on board the shore boats, and not wishing any trouble they returned on board. I then manned my lines on the vessel and commenced to catch squid; the men in the shore boats seeing us fishing came off to us to the number of sixteen boats, with some thirty men. These men demanded that I should stop fishing or leave, or else buy squid from them. They were very violent in their threats, and to avoid trouble I bought my squid, paying them one hundred and fifty dollars for the squid, which I could easily have taken if I had not been interfered with.

Wherever I have been in Newfoundland I find the same spirit exists, and that it is impossible for any American vessel to avail herself of the privileges conferred by the Treaty of Washington; that the fishing articles of that treaty are entirely useless and valueless, and in no sense does the American fisherman receive any benefit from the treaty.

JOHN DAGO, *Master*.

MASSACHUSETTS, *Essex*, ss:

GLOUCESTER, *November 18, 1880*.

Personally appeared the above John Dago and made oath to the truth of the above affidavit.

AARON PARSONS, *Notary Public*.

[Inclosure No. 2.]

*Depositions of Joseph Bowie, master, and Charles G. Ferguson, one of the crew.*

*November 18, 1880.*

(Received February 2, 1881.)

I, Joseph Bowie, master of the American schooner *Victor*, of Gloucester, Mass., do, on oath, depose and say that I sailed from Gloucester on or about the 7th of June, 1880, for a trip to the Grand Banks for codfish. I went into Musquito, Newfoundland, three times for bait, and bought capelin from the local fishermen, which they had taken in seines of their own. I paid for bait (and ice to preserve it) sixty-six dollars for the three baitings. The next time I went to a place called Devil's Cove on the chart, but it is called Job's Cove by the people; this was on the 4th of August, and the only bait to be obtained was squid. I anchored in the cove about  $\frac{1}{4}$  of a mile from the shore, and commenced to catch squid with the common hooks or jigs used for that purpose. I had no nets or seines on my vessel. I had been fishing about fifteen minutes when some sixty boats that had been fishing in-shore from us, manned by at least one hundred and fifty men, rowed up alongside of us and forbade our taking any squid. I was not interfering in any way with their fishing, they being a long distance inside of us; in fact, we were outside of the cove, in open water. I had intended to buy my squid, but finding them plenty I found I could catch them and save the expense of buying. I was acting in perfect accordance with my treaty rights and knew what my rights were.



I tried to reason with these people, and told them that I had a right to take bait or other fish without being restricted to any distance from shore; and that I should not interfere with them, and they had no right to molest me. I told them the United States had paid a large sum for this privilege, but they declared they knew nothing about it and cared nothing about it. They told me I should not catch my bait, but should buy it of them. I kept on fishing, and they then attempted to board my vessel, they threatened to cut my cable, and threatened other violence. Finding myself powerless against so many, I told my crew to haul in their lines and stop fishing, which they did; this pacified the mob and they then left me.

The next morning I determined to fish and not submit to this violence. I manned my lines and commenced to fish. The boats came off in large numbers, and the men were very violent; they said, "We warned you not to fish yesterday, and we will cut your cable and drive you on shore if you don't stop." They came alongside, struck at my men with their oars, and some of the men leaped on the vessel and gathered around the windlass. I went forward and asked them if they were aware what they were doing; they told me they were and that I should not fish there; at the same time I saw a heavy oar lifted over my head and jumped oneside to avoid the blow which if it had struck me would have struck me down. In the meanwhile the mob had entirely destroyed our lines and jigs, leaving me no means of fishing. The boats being around my bow at the cable, and knowing if it was cut my vessel would be likely to go on shore, as the wind blowed directly on, I had to submit again to mob violence and agreed not to fish any more.

They then left my vessel and went for the American schooner *Moro Castle*, which had come in and was trying to catch bait. The wind blowed so hard that I was obliged to get under way and leave without my bait. As my trip depended on my getting bait speedily, I returned there and bought my bait the next day, paying one hundred and twenty dollars for squid. I was obliged to do this, as there was no squid at any other place. It is universal in the baiting places at Newfoundland to experience the same feeling and action, and it is impossible for American vessels to take their own bait, as the local fishermen will not allow it, but compel us to purchase it of them. We are thus compelled to pay at least \$100,000 yearly, although the treaty of Washington gives us a perfect right to take these fish, and I am satisfied that the United States receives absolutely nothing for the immense sum paid for the privilege of fishing on the coast of British North America.

JOSEPH BOWIE,  
*Master of Schooner Victor.*

I, Charles G. Ferguson, one of the crew of the schooner *Victor* of Gloucester, Mass., do on oath depose and say that I was on board the schooner and know that all the facts stated by Captain Bowie are true.

CHARLES G. FERGUSON,  
*One of the Crew.*

MASSACHUSETTS, *Essex*, ss:

GLOUCESTER, *November 18, 1880.*

Personally appeared the above-named Joseph Bowie, master, and Charles E. Ferguson, one of the crew, of schooner *Victor*, and made oath to the truth of the above affidavit.

Before me.

AARON PARSONS, *Notary Public.*

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*Mr. Evarts to Mr. Lowell.*

No. 110.]

DEPARTMENT OF STATE,  
*Washington, February 4, 1881.*

SIR: The communication from Her Britannic Majesty's secretary of state for foreign affairs, Lord Granville, of October 27, 1880, respecting the disturbance which occurred at Fortune Bay on the 6th of January, 1878, was duly received in your dispatch, No. 81, of October 28, 1880.

As the separation of the questions raised by that occurrence and the method of their solution were general suggestions on the part of Her Britannic Majesty's Government, I had naturally supposed that this dispatch would have been followed by such definite propositions as this government could either accept or decline, the more so as I had (on June 12, 1880), in reply to your telegraphic report of a conversation with Lord Granville, authorized you to say that—

“The President will be quite ready to entertain any considerations which may be presented to the Secretary of State to relieve the question of the fisheries from its present difficulties.”

If, however, as circumstances would seem to indicate, I am to consider this communication as a preliminary inquiry from Lord Granville for the purpose of learning whether such suggestion would be so favorably received by this government as to justify the opening of direct negotiation, it becomes my duty to put you in possession of the impressions which this inquiry has made upon the Government of the United States.

As I understand the purport of Lord Granville's communication, Her Britannic Majesty's Government desires to arrange the compensation due the United States fishermen for the disturbances at Fortune Bay, without the formal consideration or decision of any questions of treaty construction which the facts of that disturbance might seem to raise, resting the right of compensation solely upon the unlawful violence exercised by British subjects in Newfoundland.

The facts in this case are not complicated, and the calculations are simple. The United States Government does not see in its present condition or character sufficient grounds to require any very elaborate method of decision, such as a commission, or the necessity for any protracted inquiry. If Her Britannic Majesty's Government will propose the submission of the computation of damages to the summary award of the Secretary of State of the United States and Her Britannic Majesty's representative at Washington (this function to be exercised either directly or by such delegation as may seem to them



judicious), the Government of the United States will accept the proposition and close this controversy on the basis of that award.

But in signifying to Her Britannic Majesty's Government the willingness of the United States to accede to such a proposition, you will carefully guard against any admission of the correctness of those views of our treaty rights which are expressed, either explicitly or by implication, in Lord Granville's communication of October 27, 1880.

The views of this government upon the proper construction of the rights of fishery guaranteed by the treaty of Washington have been fully expressed in my former dispatches, and no reasons have been furnished to induce a change of opinion. The delay in the settlement of the Fortune Bay case has been already too long protracted. It has provoked a not unnatural feeling of irritation among the fishermen of the United States at what they conceive to be a persistent denial of their treaty rights, while it is to be feared that it has encouraged among the provincial fishermen the idea that their forcible resistance to the exercise of these rights is not without justification in their local law and the construction which Her Britannic Majesty's Government is supposed to have placed upon the provisions of the treaty.

It is now three years since twenty-two vessels belonging to the United States, and engaged in what by them and their government was considered a lawful industry, were forcibly driven from Fortune Bay under circumstances of great provocation and at very serious pecuniary loss. And this occurred at the very time when, under the award of the Halifax commission, the Government of the United States was about paying to Her Britannic Majesty's Government a very large amount for the privilege of the exercise of this industry by these fishermen.

In March of the same year, 1878, this very grave occurrence of January was brought to the attention of the British Government in the confident hope that compensation would be promptly made for the losses caused by what the United States Government was willing to believe was a local misconstruction of the treaty or a temporary and, from ignorance perhaps, an excusable popular excitement.

It is unnecessary to do more than recall to your attention the long and unsatisfactory discussion which followed the presentation of this claim, and especially the fact that in its progress the Government of the United States was compelled to express with emphatic distinctness the impossibility of accepting the subordination of the treaty rights to the provisions of local legislation, which was apparently put forward by Her Majesty's Government as a sufficient ground for the rejection of the claim. And it was not until April, 1880 (a delay of two years, during which the importance of an early settlement was urged upon Her Majesty's Government), that, after what this government understood and accepted at least as a satisfactory modification of the assumption, we were informed by Lord Salisbury that—

“Her Majesty's Government are of opinion that, under the circumstances of the case as at present within their knowledge, the claim advanced by the United States fishermen for compensation on account of the losses stated to have been sustained by them on the occasion in question is one which should not be entertained.”

This decision of Her Majesty's Government terminated any further discussion, and the Government of the United States found itself com-

pelled to protect the interests of its citizens by such methods as might commend themselves to its judgment. In addition to the Halifax award which we had paid for the privileges and rights the exercise of which is now denied our citizens, we were also continuously paying, in the shape of a remission of duties, some \$300,000 per annum for this abortive right. Thus forced into position of antagonism which it profoundly regretted, the Government of the United States was about to take such action as would at least suspend this annual payment until the two governments were in accord upon the construction of the treaty, when Her Majesty's Government, through the United States minister in London, suggested, June 9, 1880, that the consideration of the subject be resumed between the two governments, and that in such consideration, the two questions of the interpretation of the treaty and the attack upon the American fishermen be separated. To that suggestion I replied June 12, 1880, communicating my great gratification at the friendly disposition of the British cabinet, and saying that the President would be quite ready to entertain any considerations which may be presented to the Secretary of State to relieve the question of the fisheries from its present difficulties.

On October 27, 1880, Lord Granville addressed you the communication which is the subject of this dispatch. I regret to find in this communication a disposition to restrict a liberal compensation for an acknowledged wrong by limitations of the fishing rights accorded by the treaty, to which this government cannot consent. The use of the strand, not as the basis of an independent fishing, but as auxiliary to the use of the seine in these waters, where seine-fishing is the only possible mode of taking herring, has been maintained by this government in my former dispatches, and would seem to be justified by the explicit declaration of Her Majesty's Government in the "case" submitted by them to the Halifax commission, in which referring to the use of the shores, it is affirmed "without such permission the practical use of the inshore fisheries was impossible." But as Lord Granville distinctly refers the propriety and justice of these limitations to further negotiations, I will not now discuss them, reserving what I deem it right to say for a future dispatch in reference to the second of his lordship's suggestions.

I have recalled to your attention the history of the Fortune Bay outrage in order that you may express to Her Britannic Majesty's Government the great disappointment which this long delay in its settlement has occasioned. The circumstances under which it occurred were such as to induce this government to anticipate prompt satisfaction, and it is impossible not to feel that the course which the British Government has thought fit to pursue has seriously affected public opinion as to the worth of the treaty which it was hoped by both countries had promoted an amicable solution of long-standing difficulties.

The United States government cannot feel that justice has been done its citizens in the protracted discussion which this occurrence has provoked, and while perfectly willing to endeavor, in concert with Her Britannic Majesty's Government, to find some practical and friendly solution of the differences of construction as to the treaty provisions which their application seems to have developed, this government cannot consent that pending such discussion, its citizens



shall be exposed to the indignity and loss which have been imposed upon them by these and like occurrences.

You will intimate courteously, but firmly, to Lord Granville that in accepting what we understand to be the proposition of Her Majesty's Government, it is understood as carrying the idea that the settlement suggested will be put in course of immediate execution, and that the determination of the amount of compensation will not be formally confined by any limitation arising from any construction of the treaty which may be matter of difference between the two governments.

So useful to the great interests involved do I regard the prompt settlement of this incident in our fishery relations, that I should be glad to hear by telegraph that Lord Granville concurs in the simple form of award which I have proposed.

In imparting to the British Government these views you may, in your discretion, read this dispatch to Lord Granville, and if he desires it leave him a copy.

I am, &c.,

WM. M. EVARTS.

*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE, *February 18, 1881.*

SIR, The United States' Minister at this Court called upon me here on the 16th instant.

Mr. Lowell read to me a despatch addressed to him by the United States' Secretary of State, dated the 4th of this month, relative to the occurrences at Fortune Bay; when he had finished reading it, I observed that I could only reply to it officially after having considered the despatch, a copy of which he communicated to me, for a day or two, in consultation with my colleagues, but I added that its tone was one of complaint, and hardly in unison with the conciliatory course which Her Majesty's Government have taken in the matter.

Mr. Lowell, however, assured me that he did not believe that it was intended to convey this impression, but that inasmuch as public opinion in the United States had been somewhat excited upon the subject, his Government had deemed it necessary to place once more their views upon record.

I went on to say that in any case I did not wish to dwell on a matter of form, but that as to the substance of the despatch, there seemed to be propositions in it with which I believed that Her Majesty's Government would be disposed to agree; that there would be no objection to the reservation by each Government of their opinion as to their respective rights, but it might be hoped that such questions would be set at rest both by the agreement which would be come to as to the amount of damages to be paid to the United States' fishermen, as well as by the Regulations which might be established in the future.

I added that the proposal of the United States' Government, that the question of damages should be arranged by negotiation between the Secretary of State and yourself, or by parties delegated by each of you respectively for that purpose, appeared to me to be good.

Mr. Lowell said that whilst unwilling to precipitate the discussion, he was desirous of impressing upon me the great importance of the right to the strand fishery, and of the bait question.

But I suggested that we should not go further into these matters at present.

I am, &c.

(Signed) GRANVILLE.

*Mr. Evarts to Mr. Lowell.*

[Telegram.]

WASHINGTON, *February 18, 1881.*

Despatch 109 was a necessary preparation of the tone of 110 and if not shown with it should be, with an explanation that it should have been. I consider it important that the reference of damages to British Minister and me should be prompt and full. Telegraph result.

EVARTS.

*Mr. Evarts to Mr. Lowell.*

[Telegram.]

WASHINGTON, *February 19, 1881.*

If you have not already followed instructions in my last telegram, do so at your interview Monday, and telegraph the submission, if it is agreed to.

EVARTS.

*Mr. Lowell to Mr. Evarts.*

[Telegram.]

LONDON, *February 19, 1881.*

Have received telegram. Communicated orally last Wednesday the fact of new outrages stated in 109. Secretary of State for Foreign Affairs fully impressed with importance of prompt answer. A meeting of the Cabinet this afternoon. Interview with the Minister for Foreign Affairs next Monday. If reference assented to, as I hope, it should modify terms in which I transmit the text of the 109. This was my understanding of discretion left to me.

LOWELL.

*Mr. Lowell to Mr. Evarts.*

[Telegram.]

LONDON, *February 21, 1881.*

Second telegram received. I had an interview with Secretary of State for Foreign Affairs this afternoon. He assents to the reference of the question of damages to you and Sir Edward Thornton or to your and his delegates and each side reserving its view of its



rights under the treaty. In case of delegation Secretary of State for Foreign Affairs would prefer there should be umpire. I inferred he would prefer a member of diplomatic body at Washington speaking English. Wished me to ask if you would prefer to this arrangement the offer of a lump sum. I communicated to him as you directed your No. 109.

LOWELL.

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*Mr. Lowell to Mr. Evarts.*

[Extract.]

No. 130.]

LEGATION OF THE UNITED STATES,  
*London, February 22, 1881. (Received March 5.)*

SIR: Immediately on receiving your dispatches numbered respectively 109 and 110, which reached me during the forenoon of the 15th, I addressed a note to Lord Granville, asking for an interview. In reply, he appointed 3 o'clock next day (the 16th) and at that hour I accordingly saw him at the foreign office. I carried with me copies of both dispatches, but said nothing about No. 109, because the reading to him of that was left to my discretion, and I thought it wiser to be guided by the tone and results of our conversation. I merely communicated the fact of new outrages and the natural feeling produced by them. After the reading of the dispatch (No. 110), Lord Granville said that he "regretted the tone of it as more exacting than he had hoped it would be, and hardly in unison with the conciliatory course of Her Majesty's Government." The ground of this hope, he gave me to understand, had been the friendly terms of your telegram of 12th June last. I answered that I had no reason to believe that the tone of the dispatch indicated any diminution on the part of the United States of amicable feeling, but was the expression only of a natural impatience at excessive delay. I added that, though I had no information as to how much weight my government would attach to the allegations of Professor Hinde, yet that they had been brought before Congress by Mr. Springer, would be generally believed by the fishermen, and would tend to exasperate public opinion, already impatient.

Lord Granville said \* \* \* that at first sight there seemed to be propositions in the dispatch with which Her Majesty's Government would be inclined to agree. The proposal to refer the question of damages to you and Sir E. Thornton, or to two persons delegated by you and him, seemed to him to be a good one. But on the whole matter he must consult his colleagues before replying definitely. He added that he had no objection to the reservation by each government of their opinions as to their respective rights under the treaty. It might be hoped that such questions would be set at rest both by the agreement which might be come to as to damages to be paid to American fishermen, and by the regulations to be established for the future.

I replied that I had certainly no intention to precipitate discussion, but wished to impress on him the great importance of the right of strand fishing, referring in illustration to the concession of a part of the shore to France.

The conversation was brief, for I thought it best not to enlarge upon what was expressed with sufficient distinctness by the despatch. I could see by Lord Granville's expression that he was greatly disappointed, and even somewhat disturbed, by the tone the discussion seemed to be taking. I did what I could to dissipate this feeling, assuring him of the earnest desire of my Government for a speedy and amicable settlement of the questions at issue. As the Cabinet was to meet on the afternoon of Saturday, the 19th, we arranged for another interview on Monday, the 21st.

Your first telegram reached me late on Friday night. On Saturday morning I called on Lord Granville at his house, and informed him that I had another dispatch to communicate, which I had withheld on Saturday, in the exercise of my discretion, the tenor of which it was desirable that he should know before consulting with his colleagues in the ministry. I then stated to him the substance of it, informing him at the same time that you considered it as a necessary introduction to your No. 110, and that I had misinterpreted the meaning of my instructions in regard to it. He said that he should prefer not receiving it at that time, and having accomplished the main point of letting him know its contents, especially the intimation that the necessity might be forced on the President of a display of force to protect our fishermen, I consented to postpone its official communication till Monday. At our interview on that day, I read to him confidentially the important passages which I had before put in my own words. He said that he should be sorry to consider them as conveying a menace. I replied that their evident meaning was to express only the grave anxiety of the President at the consequences of prolonged delay.

The result of the interview I have already transmitted by telegraph. Lord Granville assented to the reference as proposed by you, only adding that, in case you and Sir E. Thornton should delegate your powers, he should prefer that you would name an umpire, to decide disputed points. I inferred that his own choice would be any member of the diplomatic body at Washington who could speak English. He also wished me to ask whether the offer of a lump sum in damages would be considered by you.

I regret very much that a misapprehension on my part should have led me to act on a misinterpretation of my instructions. I acted according to my best judgment, and in the desire not in any way to embarrass a ministry of whose friendly intentions I was assured, and against whom the chief reproach on the part of the opposition is that their policy is one of timid concession, consulting rather their own apprehensions and interests than the honour of England.

I have, &c.,

J. R. LOWELL.

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*Mr. Evarts to Mr. Lowell.*

[Telegram.]

WASHINGTON, February 23, 1881.

Telegram very gratifying. Lump sum preferred. Amount with three years' interest, five per cent, is about \$120,000. An offer of two-thirds, \$80,000, would accomplish a better purpose in reference to the



larger interests pending between the Governments than a lower calculation. Probably British Minister will telegraph opinion to the effect. If such offer is made you may express opinion that it will be acceptable. Anything less if desired you may communicate but discourage as to acceptance.

EVARTS.

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*Mr. Lowell to Mr. Evarts.*

[Telegram.]

LONDON, *February 24, 1881.*

Third telegram received. I had an interview with Secretary of State for Foreign Affairs at four this afternoon. He offers fifteen thousand pounds in full settlement of Fortune Bay claims and those stated in your instruction 109. I said I believed my Government would accept eighty thousand dollars; I was not authorized to accept less. I am sure that Cabinet cannot be brought to a higher offer than fifteen thousand. If offer not accepted, Secretary of State for Foreign Affairs ready to fall back upon the plan of reference proposed by you.

LOWELL.

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*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE, *February 24, 1881.*

SIR: The United States' Minister called upon me this afternoon, and informed me that he had received a telegram from Mr. Evarts, in which the latter expressed satisfaction at the suggestion I had made of the offer of a lump sum in compensation for the losses suffered by the United States' fishermen at Fortune Bay.

Mr. Evarts added that he preferred this mode of settlement, and that he considered the total amount of the claims, with interest, amounted to about 120,000 dollars.

I told Mr. Lowell that I had had an opportunity of consulting my colleagues on the question, that we had agreed that it would be best not to look too narrowly at the intrinsic value of the claims put forward by the American fishermen, but to have regard to the more general considerations involved. I said I was not authorized to enter into any process of bargain as to the exact amount which would actually cover the losses, but to offer, on behalf of Her Majesty's Government, the payment of a lump sum of 15,000*l.*, or, say, 75,000 dollars, in full settlement of the question of damages, including interest, and also the two smaller cases which he had been instructed to bring to my notice a few days ago. With regard to these latter, I observed that the only testimony we had was all on one side, and that, if they had to be separately considered, it would be necessary to call for counter-evidence. They were, however, cases in which, *primâ facie*, the Newfoundland fishermen appeared not to be in the right. At the same time, it was clear that the amount of pecuniary damage must be very small.

I added that, if our offer was not acceptable, we should be quite ready to adopt the proposal made in Mr. Evarts' despatch, that the matter should be referred to you and him, or to Delegates chosen by each of you. Each party, I observed, were agreed to reserve the question of the rights which they respectively claimed under the Treaty, and to treat this matter separately from the discussion of the pecuniary payment.

I mentioned to Mr. Lowell that I had at first been taken by surprise at an idea put forward in the despatch of which he had told me the substance last Monday, namely, the possibility of the President sending a ship to protect the American fishermen on the coast of Newfoundland; but that, on consideration, it appeared to me that such a course might be taken which might be of great advantage, if each Government sent vessels with Commanders who received identic and conciliatory instructions for the purpose of keeping the police among the fishermen of their respective countries.

Such a practice has been in force with good effect for some time on the part of the British and French Governments.

I am, &c.

(Signed) GRANVILLE.

*Mr. Evarts to Mr. Lowell.*

[Telegram.]

WASHINGTON, *February 25, 1881.*

Regret offer not quite up to expectations, but accept assuming that amount can presently be at my disposal for immediate distribution. This latter not a condition of acceptance but important in view of conditions.

EVARTS.

*Sir E. Thornton to Earl Granville.*

[Extract.]

WASHINGTON, *February 28, 1881.*

(Received March 12.)

On the morning of the 23rd instant Mr. Evarts wrote to me that he had received a telegram from Mr. Lowell, and begged that I would call upon him at the State Department as soon as I could. On my arriving there he read to me the telegram which related to the Fortune Bay affair. It was much shorter, and contained less detail than your Lordship's telegram of the 22nd instant, which I had had the honour of receiving on the previous evening. It stated that Her Majesty's Government was disposed to accept the proposal that the amount of damages caused to American fishermen should be settled by Mr. Evarts and myself, or by Delegates appointed by us, but thought that there should be a previous agreement to refer the matter to a third person, in case the delegates should fail to agree. The telegram added that Her Majesty's Government would prefer to make an offer of a fair sum to settle the claims of the American fishermen.



I then communicated the substance of your Lordship's telegram to Mr. Evarts, and observed that I had understood it to signify that the question should be referred to a third person, whether it was he and I or the Delegates named by us who should disagree; but he expressed the opinion that Mr. Lowell had rightly interpreted what your Lordship had said.

He went on to say that the Government of the United States would prefer that Her Majesty's Government should make an offer of a lump sum in satisfaction of the damages caused to American fishermen in the Fortune Bay affair. He hoped, however, that it would be a generous offer; for that an illiberal one would be worse than none. He believed that a liberal view of the matter would create a good feeling and would contribute to the success of, and facilitate, any future negotiation which must come on sooner or later with regard to the fisheries question.

I replied that your Lordship's note of the 27th October last and the offer now made was a sufficient proof that Her Majesty's Government wished to deal with the question in a spirit of liberality.

On the evening of the 25th instant your Lordship's telegram of that day reached me, and on the following day I called upon Mr. Evarts, who read me a telegram which he had received from Mr. Lowell on the evening of the 24th instant, informing him that your Lordship had offered the sum of 15,000*l.* in settlement of the claims comprised in Mr. Evarts' two despatches to Mr. Lowell. He also read me his answer, which he had forwarded on the 24th instant, to the effect that the United States' Government accepted the offer, expressing the hope that the amount would be available at once, though it did not make this a condition of its acceptance.

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*Mr. Evarts to Mr. Lowell.*

[Telegram.]

WASHINGTON, *March 2, 1881.*

Secretary's offer as communicated to me by your telegram of 24th February was £15,000 for Fortune Bay and those mentioned in No. 109. This I accepted by my telegram of February 25. This completed the subject, and the amount as definitely ascertained, and showed no indistinctness or discrepancy of views. All the previous communications either way related to Fortune Bay alone. My calculation of \$80,000 was on computation of two-thirds aggregate of Fortune Bay claims. Claims of No. 109 were introduced specifically by secretary as additional to Fortune Bay, and I accepted the sum offered for both.

I cannot consent to any modification of the completed settlement of specific claims. I have at no time treated except of definite pecuniary interests of claimants in my charge. The agreed sum measures these claims and goes to these claimants. I have been willing to give every assurance to cover all claims brought to the knowledge of either government, and authorized you to inform secretary that as matter of fact no others were entertained by this government. All this was not

part of the offer made and accepted, and came in as new matter afterwards.

You will explain to secretary the impossibility of my changing the subject of negotiation after an agreed valuation of that subject.

Should the offer be retracted after its acceptance or new conditions be imposed afterwards which would not have been entertained as an original subject, I must regret that the effort to remove a serious obstacle to friendly disposition of the fishery controversy should have increased the difficulties which embarrass it.

If the money is paid under the assurance authorized by my last, telegraph me. If it is not, you may say to the secretary that this government will await his early attention to Nos. 109 and 110, which must stand unaffected by anything which has passed since.

EVARTS.

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*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE, *March 3, 1881.*

SIR, The United States Minister called upon me to-day, and communicated to me the substance of a telegraphic despatch from Mr. Evarts, of which a copy is inclosed. I observed that I shared Mr. Evarts' regret at our being unable so far to arrive at an agreement, as I had looked forward to the great satisfaction of settling the matter with him; but that if it was the fear of new claims which made him hesitate to give the assurance required by Her Majesty's Government, he must remember that they ran a similar risk. I was not, however, aware of any claims, excepting those which he had mentioned, though there had been brought to the notice of Her Majesty's Government two cases, of which I furnished him with the particulars, in which complaints had been made of the interruption of American vessels, the "*Moro Castle*" and "*Minnesota*" when engaged in collecting bait. It did not appear that either of these cases was of importance.

I am, &c.

(Signed)

GRANVILLE.

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*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE, *March 3, 1881.*

SIR, I have received your telegraphic despatch of the 2nd instant, and I have to state to you, in reply, that Her Majesty's Government did not intend to put forward a fresh alternative, but desired only to allude to the original offer made by the United States' Secretary of State to have the matter referred to you and him, or else to Delegates nominated respectively by each of you, with the addition that provision should be made for reference to a third person in the event of disagreement.

I am, &c.

(Signed)

GRANVILLE.



*Mr. Evarts to Mr. Lowell.*

[Telegram.]

WASHINGTON, *March 5, 1881.*

Read my dispatch 110, fourth and fifth paragraphs, relating to arbitration, and ask secretary whether he was and is ready to submit the matter there stated to summary award of Secretary of State and British minister. If so, say to him that as he has expressed a preference for a lump sum rather than this summary award, and I agree in this preference, that I will receive a proposition from him of a lump sum for the Fortune Bay claims, and if it comes up to two-thirds of these claims, or \$80,000, you have authority to accept it. If not, you may communicate any offer he wishes to make for the Fortune Bay claims. I renew the subject in this way as a last effort to remove the obstacle these claims as heretofore treated by British Government interpose to a liberal disposition of the more permanent interests involved, and to supersede, if possible, the record made by the recent communications between the governments that an explicit offer of a lump sum for the Fortune Bay claims and those named in No. 109 was retracted after its explicit acceptance by this government. You may say to the secretary that I will also receive a proposition of a lump sum for the claims in 109, and if it comes up to £15,000 you may accept it. If not, communicate it.

Carefully distinguish in this dispatch what you are to say to secretary and what you are instructed to do upon what may follow.

You will use your own discretion as to the terms in which you will impress upon secretary my earnest desire to relieve the important discussions on the fisheries which must soon engage the two governments from the disturbing influence of the unsatisfied Fortune Bay claims.

You will of course understand that if secretary is ready to close the offer of £15,000 for Fortune Bay and No. 109 already made upon the assurance and information you are authorized to give, you can close the matter at once and telegraph me.

In reference to last part of your last telegram, I have no difficulty in saying and feeling that no other claims are at all likely to arise, but I cannot receive money measured by particular claims under any indefinite obligations to reserve or distribute it otherwise.

EVARTS.

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*Mr. Blaine to Mr. Lowell.*

[Telegram.]

WASHINGTON, *March 8, 1881.*

Evarts' remark about advertising for claims was made to show British minister the impracticability of sacrificing the rights of unknown parties who might afterwards appear with just claims. At present no such claims are believed to exist, but I could not consent in settling the known claims of one class of persons to bar the claims of another class without notice.

The simple question is whether Lord Granville is willing to adjust the claims comprehended in 109 and 110, either by payment of lump sum or by reference of the whole matter to British minister and myself. I am ready to consider either mode of adjustment.

BLAINE.

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*Mr. Lowell to Mr. Blaine.*

[Telegram.]

LONDON, *March 9, 1881.*

Interview with the minister for foreign affairs this afternoon. He says cabinet equally desirous with Evarts to accelerate settlement. As Evarts did not see his way to accept terms last offered, secretary is willing to consent to reference either to you or late Secretary of State with British minister at Washington. Is willing to pay £15,000 for all claims up to end of last year. If cruisers be sent as intimated in 109, he would be glad to know your opinion of joint cruisers with joint instructions.

LOWELL.

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*Mr. Lowell to Mr. Blaine.*

No. 141.]

LEGATION OF THE UNITED STATES,  
*London, March 12, 1881.* (Received March 25.)

SIR: Referring to my 138, I have the honor to report that on receipt of Mr. Evarts's telegram on the 7th of March, I had an interview with Lord Granville at the foreign office, the result of which I communicated to you by cable. I have very little to add except that I ascertained that Lord Granville's ideas of a lump sum for the Fortune Bay claims, and those in your 109, did not rise above £6,000. He considered the £15,000 already offered, so "excessive" that it would be impossible to go before Parliament with it except as a payment in full.

I represented to him as strongly as I could that it looked much smaller to us than to him, and that it would promote a cordial understanding if these old claims could be got out of the way. I suggested that he should offer a larger sum for a full receipt up to that time, a few thousand pounds being of little importance compared with the amicable relations of the two nations. The justice of this view I have also endeavored to impress upon other members of the cabinet, as I chanced to meet them. I found them all very friendly and anxious to arrive at a final settlement of a delicate question, but apparently all of one mind as to the adequacy of the sum offered to cover the claims.

On the morning after my interview with Lord Granville, I sent him at his request a copy of such parts of your telegram as could properly be communicated to him.

On the arrival of your telegram, received on the 9th of March, I had another interview with Lord Granville at the foreign office and explained to him the passage about "advertising for claims," which



had puzzled him in Sir Edward Thornton's dispatch. The result of our conversation I have already forwarded by cable. I have nothing of importance to add except that I insisted that up to the 26th of February my distinct understanding was that the £15,000 were offered for Fortune Bay claims and the two in your No. 109.

I omitted to mention in my former dispatch that Lord Granville, at one of our earlier interviews, wished me to inquire whether my government, in case it should become necessary, as suggested in your No. 109, to take measures for the protection of our fishermen, would have any objection to the sending of joint cruisers with joint orders. I have already stated this in my last telegram.

I have, &c.

J. R. LOWELL.

*Mr. Blaine to Mr. Lowell.*

[Telegram.]

WASHINGTON, *March 14, 1881.*

Inform Lord Granville that his proposition to refer the matter to Sir Edward Thornton and myself is accepted. The subject of joint cruisers may be postponed, or, if desired, may also be referred to Sir Edward and myself to be taken up afterwards with power to agree upon a series of regulations under which treaty rights may be mutually secured.

BLAINE.

*Sir E. Thornton to Earl Granville.*

[Substance received by telegraph, March 12.]

[Extract.]

WASHINGTON, *March 14, 1881.*

I have the honour to inform your Lordship that, on Mr. Blaine's invitation, I called upon him at the State Department on the 12th instant, for the purpose of conferring with him upon the proposed settlement of the Fortune Bay and other claims of American fishermen.

Mr. Blaine said that, after due reflection, he had come to the conclusion that the discussion of the matter could be carried on more satisfactorily here than in London. He adverted to the position which had been taken by his predecessor, and pointed out that, as Mr. Evarts had declined to give the full assurance required by your Lordship on the receipt of 15,000*l.* from Her Majesty's Government, he did not think it was in his power at once to agree to the same terms without at least making further inquiries as to the existence of other claims. Upon my observing that your Lordship had since then offered to substitute the phrase "up to the end of last year" for "up to the present time," Mr. Blaine said that, though this made a slight alteration in the wording, the substance of the assurance to be given was the same, for that it was hardly to be supposed that any claims

could be originated at this season of the year. But he authorized me to inform your Lordship that he hoped that he and I could come to an agreement upon the question at issue without reference to a third person, and that, after further inquiries and when he had satisfied himself as to the probable existence of other claims, and should have complete control of the claimants and of the whole matter, he would even be able to accept your Lordship's offer of 15,000*l.*, coupled with a statement, on its acceptance, in the terms desired by Her Majesty's Government.

Upon my inquiring what steps it was proposed to take with a view to an agreement as to the rules and regulations which are to prevail hereafter respecting the fisheries, Mr. Blaine replied that this question would meet the early consideration of the United States' Government, and that he thought it was very desirable that a decision should be arrived at as soon as possible.

Mr. Blaine was most cordial in his manner, and expressed his earnest hope that there might be no obstacle to friendly relations between the two Governments.

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*Mr. Lowell to Earl Granville.*

LEGATION OF THE UNITED STATES,  
*London, March 15, 1881. (Received March 15.)*

My LORD, I have the honour to inform your Lordship that I received last evening a cable message from Mr. Blaine, in which he instructs me to say that your Lordship's proposition to refer the question of damages to American fishermen to himself and Sir Edward Thornton is accepted, and further suggesting that the subject of joint cruisers should be postponed or should also be referred to the same gentlemen. I inclose a copy of this telegram.

I have, &c.

(Signed) J. R. LOWELL.

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*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE, *March 17, 1881.*

SIR, With reference to my despatch of this day's date in which I inclosed a copy of a letter from Mr. Lowell forwarding a copy of a telegram from Mr. Blaine stating that the proposition to refer to him and to yourself the Fortune Bay indemnity is accepted, I should wish to know whether Her Majesty's Government are to understand that the claims in question are to be referred for investigation and assessment, or merely in order that Mr. Blaine and yourself may agree upon the acceptance by the United States' Government of a lump sum upon his giving you the assurance which Her Majesty's Government have required.

You will have seen that the telegram from Mr. Blaine does not tally with the statement made to you by him on Saturday last, as reported in your telegram of the 15th instant.

I am, &c.

(Signed) GRANVILLE.



*Sir E. Thornton to Earl Granville.*

[Telegraphic.]

WASHINGTON, *March 31, 1881.*

(Received March 31.)

Mr. Blaine anxiously awaits an answer from the United States' Minister in London with respect to his request that Fortune Bay claims should be referred to him and myself.

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*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE, *April 2, 1881.*

SIR, I have received your telegram of the 31st ultimo, in which you inform me that Mr. Blaine is extremely anxious to learn whether Her Majesty's Government are prepared to accede to his request that the claims connected with the Fortune Bay dispute should be settled at Washington between himself and Her Majesty's Minister.

I have to state to you, in reply, that should there be any misunderstanding with regard to Mr. Blaine's meaning in pressing this mode of settlement, it is desirable that it should be made clear. If, however, he is ready to agree that the claims of the American fishermen should be referred to himself and yourself, or to Delegates to be named by both, for assessment, Her Majesty's Government are prepared to accept this arrangement at once.

This mode of proceeding is now preferred by the Colonial authorities in this country to the payment of a lump sum, in view of the desirability of obtaining the co-operation and concurrence of the Government of Newfoundland.

I should be glad to learn whether anything has passed between Mr. Blaine and yourself with regard to a reference to a third party in case it should be found impossible to come to an agreement between yourselves, or that the same difficulty should occur in the case of the Delegates.

Her Majesty's Government do not wish to raise any difficulties, and they give you full discretion to arrive at the best solution you can make with the Secretary of State, either as regards an assessment of the claims, or the payment by Her Majesty's Government of a lump sum. Under present circumstances they would prefer an arrangement by assessment.

I need not remind you how desirable it is, in view of the approach of the fishing season, that a settlement of these claims should be arrived at as speedily as possible, and also an understanding with regard to the Regulations to be framed for the fisheries, with a view to the prevention of future misunderstandings.

I am, &c.

(Signed)

GRANVILLE.

*Sir E. Thornton to Earl Granville.*

[Substance received by telegraph, April 5.]

[Extract.]

WASHINGTON, April 4, 1881.

With reference to your Lordship's telegram of the 2nd instant, I have the honour to inform you that I called this morning upon Mr. Blaine at the State Department, and stated that Her Majesty's Government acceded to his request that the fishery claims should be referred for assessment to him and myself, or to Delegates named by us. I presumed that by the fishery claims your Lordship intended to signify the Fortune Bay claims and those described in Mr. Evarts' despatch to Mr. Lowell No. 110, the contents of which were communicated to you by the latter.

I went on to say that I was afraid that we should not be likely to agree upon the amount of damages to be paid on account of the claims in question, and that it would therefore be very desirable that we should name a third person who should decide in the event of our disagreeing. But Mr. Blaine replied that Mr. Evarts' original proposal, to which he had now reverted, did not include any reference to a third person, and that his Government was not prepared to acquiesce in such a reference, to which he thought the subject of the claims was not adapted.

In answer to my inquiry, Mr. Blaine said that he would rather negotiate the matter with me than leave it to Delegates named by us. He added that he would examine the documents upon the subject as soon as he could, and would then invite me to meet him.

In the course of the conversation Mr. Blaine said that he should have preferred to have negotiated on the basis of a lump sum, and that, having now carefully examined the claims already presented, and considered possibility of any further claims which might be brought forward, he would have been prepared, on behalf of his Government, to accept the sum of 16,000*l.*, and to give a receipt in full for all claims for interruption of American fishermen on the coasts of Newfoundland or of its dependencies which may have arisen up to the 4th March, 1881.

I replied that Her Majesty's Government now preferred that the claims should be assessed, and was disinclined to negotiate upon the basis of a lump sum.

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*Sir E. Thornton to Earl Granville.*

[Substance received by telegraph, April 22.]

[Extract.]

WASHINGTON, April 25, 1881.

On the 21st instant I had an interview with Mr. Blaine at the State Department with regard to the Fortune Bay claims and those arising from United States' fishermen having been prevented from fishing for bait.

Mr. Blaine considers that the offer which he had made to accept 16,000*l.* in full of all claims of the class above mentioned up to the



4th March last was really better for Her Majesty's Government than that made by your Lordship of 15,000*l.* up to the end of last year. With a view, however, to a prompt settlement of the question, and to entering upon a negotiation as to the regulations respecting the fisheries which were to prevail hereafter, he was ready to accept the sum of 15,500*l.* for the Fortune Bay claims and those of American fishermen who had been prevented from fishing for bait, as well as for all claims arising out of any interruption of American fishermen on the coasts of Newfoundland and its dependencies up to the 4th March last.

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*Earl Granville to Sir E. Thornton.*

FOREIGN OFFICE, *April 28, 1881.*

SIR: I have had under my consideration your despatch of the 4th instant, reporting the substance of a conversation you had had that morning with Mr. Blaine as to the means proposed for arriving at a settlement of the claims of the American fishermen concerned in the dispute which had arisen with the Newfoundlanders at Fortune Bay in the month of January 1878.

I have informed you by telegraph this day, in reply, that Her Majesty's Government are not prepared, without a previous examination of the individual claims, to make any further advance upon the gross sum of 15,000*l.* which you have been authorized to offer to the Government of the United States as compensation for the losses sustained by the American fishermen in consequence of these transactions. They are, however, willing to abide by the proposal which has been made to Mr. Blaine, and accepted by him, that the amount of the claims should be referred to Washington for inquiry and adjustment between himself and you.

I request that you will convey to Mr. Blaine the views of Her Majesty's Government in the sense of this despatch.

I am, &c.

(Signed) GRANVILLE.

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*Mr. Blaine to Sir Edward Thornton.*

DEPARTMENT OF STATE,  
*Washington, May 6, 1881.*

SIR: I was advised by Mr. Lowell, by his dispatch of the 9th of March last, that Lord Granville would either pay £15,000 in the Fortune Bay matter for a receipt in full against all claims up to and including the close of the past year, or he would refer the matter to yourself and me for adjustment.

I chose the latter, because I had at that time no means of knowing with definiteness whether there might not be claimants whom I could not properly bar by a receipt given without an opportunity of a hearing assured to them.

As I told you in our first consultation, I did not seek the reference with any desire to urge you to a larger sum than was offered by Lord

Granville, unless new facts could be found which would warrant the demand.

Both of us have discovered, I think, that we have no practical means of assessing the damages except by taking the facts as stated in the American case, unless, indeed, we should resort, at great expense and with endless trouble, to a new, independent, and exhaustive investigation by original testimony in each and every claim.

Under these circumstances it is proper that I should frankly state to you that I find no other claims than those already presented for wrongs inflicted in the waters of Newfoundland and its dependencies; and, as I originally advised you, I have no desire to urge you to increase the sum offered by Lord Granville on the old claims.

My investigations have included the period up to March 4, 1881; and in giving the receipt I would, if desired, be willing to cover that period. I make this offer in the hope that you will recognise in it a disposition on the part of the United States to be not merely just but liberal in dealing with Her Majesty's Government on this complicated and somewhat delicate question.

Your understanding, communicated verbally, that the injury at Aspee Bay was to be included, is correct, and the receipt which I shall give will cover that case.

In accepting Lord Granville's offer in this matter I desire to state that at your convenience I will discuss the subject of joint cruisers on the fishing grounds, and the code of instructions under which they should sail. I understand this subject to have been also referred by Lord Granville.

I have, &c.,

JAMES G. BLAINE.

*Sir Edward Thornton to Mr. Blaine.*

WASHINGTON, *May 28, 1881.*

(Received May 28.)

SIR: With reference to your note of the 6th instant, relating to the discussions which have recently taken place between Her Majesty's Government and that of the United States with regard to the losses alleged to have been suffered by United States fishermen in Fortune Bay, Newfoundland, on the 6th of January 1878, in consequence of certain acts committed by natives of that colony, I have the honor to inform you that Her Majesty's Government is prepared to meet the views of the Government of the United States upon this matter by the payment of the sum of £15,000 sterling in full satisfaction of all claims for disturbance of American fishermen in their fishing operations on the coasts of Newfoundland and its dependencies up to the 4th of March last, including the occurrences at Aspee Bay, Cape Breton, Nova Scotia, in the Dominion of Canada, a statement of which is made at pages 138 to 141, inclusive, of Ex. Doc. No. 84 of the second session of the House of Representatives of the Forty-sixth Congress.

It will, however, be clearly understood that the above-mentioned payment will be made without prejudice to any question of the rights of either of the two governments under Articles XVIII to XXV,



both inclusive, and Article XXXII of the treaty of May 8, 1871, between the United States and Great Britain.

I have, &c.,

EDW'D THORNTON.

*Mr. Blaine to Sir Edward Thornton.*

DEPARTMENT OF STATE,  
Washington, May 28, 1881.

SIR: I have the honor to acknowledge the receipt of your note of May 28, 1881, in which, referring to mine of the 6th, you convey the gratifying intelligence that Her Majesty's Government has accepted the terms of settlement agreed upon by us of the difficulties at Fortune Bay, occurring on the 6th of January, 1878.

The understanding of this government is, as you state, that the payment of £15,000 sterling is in full satisfaction of all claims for disturbances of American fishermen in their fishing operations on the coast of Newfoundland and its dependencies up to 4th of March last, including the occurrences at Aspee Bay, Cape Breton, Nova Scotia, in the Dominion of Canada, a statement of which is made at pages 138 to 141, inclusive, of Ex. Doc. No. 84 of the House of Representatives of the Forty-sixth Congress.

This government also clearly understands that the above-mentioned payment will be made without prejudice to any question of the rights of either of the two governments under Articles XVIII to XXV, both inclusive, and Article XXXII of the treaty of May 8, 1871, between the United States and Great Britain.

You can advise me of the time and method of payment, which I leave to be settled by your own convenience.

I have, &c.,

JAMES G. BLAINE.

*Sir Edward Thornton to Mr. Blaine.*

WASHINGTON, June 2, 1881.  
(Received June 2.)

SIR: With reference to your note of the 28th ultimo, I have the honor to transmit herewith a bill of exchange in triplicate drawn by me on Her Majesty's paymaster-general, at thirty days after sight, for the sum of £15,000 in full payment of the claims mentioned in the note above referred to, and on the conditions therein expressed.

I have, &c.,

EDW'D THORNTON.

*Mr. Blaine to Sir Edward Thornton.*

DEPARTMENT OF STATE,  
Washington, June 4, 1881.

SIR: I have the honor to acknowledge the receipt of your note of the 2d instant, transmitting a bill of exchange in triplicate drawn by

you on Her Majesty's paymaster-general, at thirty days after sight, for the sum of £15,000, in full payment of the claims mentioned in my note of the 28th ultimo, and to inform you that the same is accepted by this government on the conditions heretofore agreed upon between us.

I have, &c.,

JAMES G. BLAINE.

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*Mr. Blaine to Mr. Lowell.*

No. 206.]

DEPARTMENT OF STATE,  
*Washington, July 30, 1881.*

SIR: You have learned from former dispatches that the question in reference to the Fortune Bay claims was settled by Sir Edward Thornton and myself. The amount paid by Her Britannic Majesty's Government has been distributed among the individual claimants, and in connection with this subject there remains nothing for discussion between the two governments.

But in the examination of the claims in order to their proper distribution, the attention of this government has been forcibly drawn to the condition of affairs out of which these claims arose, and the time seems opportune to ask the serious consideration of this subject by Her Majesty's Government.

Among the more recent claims which had not been submitted to the British Government, but which are, of course, included in the settlement, were several going to show the existence on the part of the native fishermen of Newfoundland of a determined opposition to the exercise of the treaty privileges by fishermen of the United States. In one case, a large and angry mob of these fishermen actually took possession of an American fishing vessel, cut her anchor, and set her sails for the avowed purpose of causing her to drift on the rocks. And the universal testimony of our fishermen, including many who have made no formal complaint to the government, is that they are absolutely forbidden, by both the show and use of force, from taking bait on the coasts of Newfoundland and in other vicinities.

It might be supposed that the recognition of the British Government of its responsibility for such lawless interference and its reasonable compensation for losses consequent upon them, would put a stop to further violence. But the payment even of large damages by the Imperial Government does not make itself felt upon the provincial population. And from all the information submitted to this government it seems to be not an unfair or unreasonable conclusion that there is too much sympathy between the local authorities and the native fishermen, and that there exists at the fishing stations no adequate police force with authority, ability, and disposition to check these outrages.

The condition of these people under the treaty is, undoubtedly, hard. They are very poor and illiterate. They depend for what is, at best, a very scanty subsistence upon the sale of bait to the United States vessels employed in cod-fishing upon the banks. And the use of their privilege of catching their own bait on the Newfoundland shores, which the treaty secures to American fishermen, necessarily deprives the native fishermen of this means of support.



But it is to be assumed that these considerations were given their due weight by the British Government when negotiating the treaty of Washington, and it must not be forgotten that Newfoundland has received a large sum from the United States Treasury in payment for this privilege.

I refer to these facts merely as the indication of future troubles, for if at any time the fishing vessels of the United States should resolve to meet force with force the result of so untoward an occurrence would be to raise issues equally unpleasant to both governments.

The time is approaching when the present treaty will expire, and in the discussion of the common interests, which must be anticipated, this government is anxious that questions sufficiently grave in their own nature should not be complicated with local and temporary irritations.

It is desirable, therefore, that the imperial government should impress upon the provincial authorities their duty to maintain and enforce the rights which the treaty has conferred within their jurisdiction upon citizens of the United States, and especially that there should be placed at the baiting stations and on the frequented portions of the coast officials with sufficient authority to restrain these outbreaks of violence.

You are instructed to bring this subject to the attention of Her Britannic Majesty's Government in such manner as you may deem most judicious. In doing so, you will take care that Her Britannic Majesty's Government shall fully understand the friendly spirit in which your representation is made, and that the desire of this government in making it is to prevent in the future those disturbances which have done so much to render unsatisfactory the settlement which it was hoped had been reached in the fishery provisions of the treaty of Washington.

I am, &c.,

JAMES G. BLAINE.

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*Mr. Lowell to Lord Granville.*

LEGATION OF THE UNITED STATES,  
*London, August 19, 1881.*

MY LORD: I am instructed by Mr. Blaine to ask the attention of Her Majesty's Government to a subject of serious interest in connection with the exercise, by the fishermen of the United States, of their treaty privileges on the coast of Newfoundland.

In the examination of the Fortune Bay claims, in order to make a proper distribution of the amount lately paid by Her Majesty's Government, the attention of the Government of the United States has been forcibly drawn to the condition of affairs out of which those claims arose. Among the more recent claims which had not been submitted to Her Majesty's Government, but which are, of course, included in the settlement, were several going to show the existence, on the part of the native fishermen of Newfoundland, of a determined opposition to the exercise of the treaty privileges by fishermen of the United States. In one case a large and angry mob of these Newfoundland fishermen took possession of an American fishing vessel, cut her anchor and set her sails for the avowed purpose of causing her to drift on the rocks. And the universal testimony of our fisher-

men, including many who have made no formal complaint to the government, is that they are absolutely forbidden, both by the show and use of force, from taking bait on the coast of Newfoundland and in other vicinities. It might be supposed that the recognition by Her Majesty's Government of its responsibility for such lawless interference, and its having made reasonable compensation for losses consequent upon them, would put a stop to further violence.

But the payment of even large damages by the Imperial Government does not make itself felt upon the provincial population. And from all the information submitted to the Government of the United States, it seems to be not an unfair or unreasonable conclusion that there is too much sympathy between the local authorities and the native fishermen, and that there exists at the fishing stations no adequate police force with authority, ability, and disposition to check these outrages.

The condition of these people under the treaty is undoubtedly hard. They are very poor and illiterate. They depend, for what is at best a very scanty subsistence, upon the sale of bait to the United States vessels employed in cod-fishing upon the banks; and the use of their privilege of catching their own bait on the Newfoundland shores, which the treaty secures to American fishermen, necessarily deprives the native fishermen of this means of support.

But it is to be assumed that these considerations were given their due weight by the British Government when negotiating the treaty of Washington, and it must not be forgotten that Newfoundland has received a large sum from the United States Treasury in payment for this privilege.

Mr. Blaine, in his dispatch on this subject, states that he refers to these facts merely as they are indicative of future troubles, for if at any time the fishing vessels of the United States should resolve to meet force with force, the result of so untoward an occurrence would be to raise issues equally unpleasant to both governments.

The time is approaching when the present treaty provisions will expire, and in the discussion of the common interests which must be anticipated my government is anxious that questions sufficiently grave in their own nature should not be complicated with local and temporary irritations.

It is believed by my government, therefore, that Her Majesty's ministers will agree in thinking it desirable that the Imperial Government should impress upon the provincial authorities their duty to maintain and enforce the rights which the treaty has conferred within their jurisdiction upon citizens of the United States, and especially that they should place at the baiting stations, and on the frequented portions of the coast, officials with sufficient authority to restrain these outbreaks of violence.

In bringing this subject to the attention of your lordship, I am particularly instructed to take care that Her Majesty's Government shall fully understand the friendly spirit in which my representation is made, and that the desire of my government, in making it, is to prevent in the future those disturbances which have done so much to render unsatisfactory the settlement which it was hoped had been reached in the treaty provisions of the treaty of Washington.

I have, &c.,

J. R. LOWELL.



*Lord Granville to Mr. Lowell.*FOREIGN OFFICE, *August 29, 1881.*

SIR: I have the honor to acknowledge the reception of the communication which you were good enough to address to me on the 19th instant, in which, by Mr. Blaine's direction, you invite the attention of Her Majesty's Government to certain facts which tend to show, it is alleged, a determination on the part of the native fishermen of Newfoundland to oppose the exercise by the fishermen of the United States of the privileges secured to them by treaty on the coast of Newfoundland.

In reply I beg leave to state that the friendly language in which this representation from your government is couched is fully appreciated by Her Majesty's Government, and I need not assure you that it shall be considered by them with all the care demanded by the importance of the interests concerned.

I have, &amp;c.,

GRANVILLE.

*Lord Granville to Mr. Hoppin.*FOREIGN OFFICE, *November 17, 1881.*

SIR: Referring to the letter which I had the honor to address to Mr. Lowell on the 29th of August last, I now beg leave to state to you that Her Majesty's principal secretary of state has been in communication with the government of Newfoundland in regard to the observations which Mr. Lowell had been instructed to address to Her Majesty's Government respecting the line of conduct which, it is alleged, is adopted by the fishermen of the colony towards the fishermen of the United States, showing, as Mr. Lowell represents, the existence of a determined opposition on their part to the exercise of their treaty privileges by the American fishermen.

I have now the honor of stating to you that the attention of the government of Newfoundland has been particularly directed by the Earl of Kimberly to that portion of Mr. Lowell's letter of the 19th of August, in which it is suggested that the authorities in the colony should maintain and enforce the rights conferred within their jurisdiction upon citizens of the United States, and especially that they should place at the baiting stations and on the frequented portions of the coast, officials with sufficient authority to restrain outbreaks of violence.

The government of Newfoundland, in reply, fully recognize the importance of the subject to which their attention has thus been directed, but they point out, with reference to the case of the American vessel which is cited by Mr. Lowell as having been taken possession of by a large and angry mob, her anchor cut, and her sails set, for the avowed purpose of drifting her upon the rocks, that it is somewhat remarkable that not only was no complaint made by the master of this vessel to a magistrate, but that neither he nor his crew should have mentioned the subject until he had returned to the United States and the claims of other fishermen were being brought forward for adjudication.

The government of Newfoundland regret that the good faith of the local authorities should be called in question. It is not denied that differences have arisen, and may again occur, between British and United States fishermen when plying their calling in the same locality, such differences not being infrequent even when fishermen of the same nationality fish together. But they are not aware of any case of dispute between British and American fishermen in which, on complaint made, an investigation has not taken place and justice has not been administered.

The colonial authorities at Saint John's have expressed a wish that the attention of the Government of the United States should be called to the demoralizing effects upon the people of Newfoundland, resulting from smuggling, and the sale by the United States fishermen of various articles, including spirits to a considerable extent.

The police force of the country, they state, has been necessarily increased, and even now is inadequate, not indeed for the preservation of order amongst the native population, but for the prevention of wanton destruction of property and other lawless acts committed by a rough class of United States fishermen, who, after committing outrages, take refuge on board their vessels, leaving the unfortunate sufferers without remedy.

In forwarding these observations, Her Majesty's Government have no desire to raise a discussion with the Government of the United States, on matters which it would be unreasonable to expect should be entirely within their control. Her Majesty's Government cordially reciprocate the friendly spirit in which their attention has been invited by Mr. Blaine to the treaty privileges of the American fishermen, but they would point out that reports, from whomsoever received, of irregularities of which no complaint is made at the time, and on or from the spot, to the responsible authorities, must be accepted with some degree of caution. For their part, Her Majesty's Government fully appreciate the desire expressed in Mr. Lowell's letter, that every precaution should be taken to obviate the recurrence of disputes on the fishing grounds of Newfoundland between the British and American fishermen, and they trust that the measures which have been adopted, and which will be supplemented, if necessary, by further action, may fulfill the common wishes of the two governments.

I have, &c.,

GRANVILLE.

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BRITISH EMBASSY.

*British Memorandum of May 3, 1882.*

With reference to Correspondence which has passed between Her Majesty's Legation and the State Department respecting the Newfoundland Fisheries question, it is sought to determine what Regulations it would be expedient to enforce for the protection of the fisheries, and to this end attention is called to the following Acts viz. Cap: 102 consolidated Statutes Newfoundland,

38.	Vict: Cap:	7
39	" "	6
40	" "	13
42	" "	2



which Documents were appended to the message from President Hayes to the House of Representatives. The United States Government is invited to examine these Statutes, and to state whether they find in them anything open to objection or have any suggestions to make with regard to them.

Any Communication which the United States Government may make upon this subject will receive careful consideration on the part of Her Majesty, and when an agreement has been arrived at as to the regulations which should govern the fisheries the Legislature of Newfoundland will be invited to make the necessary changes in the law if any such should be found to be necessary.

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DEPARTMENT OF STATE,  
May 9, 1882.

*United States Memorandum.*

Referring to the British Memorandum relating to the Newfoundland Statutes restricting the fisheries, viz:

Cap. 102 Consolidated Statutes of Newfoundland.

38 Vic. cap. 7.

39 Vic. cap. 6.

40 Vic. cap. 13.

42 Vic. cap. 2.

the Government of the United States makes the following observations on these Acts:

Section 2 of cap. 102, which is as follows:

"No person shall at any time between the 20th day of December and the 1st day of April in any year, use any net to haul, catch or take herrings on or near the coasts of this colony or of its dependencies, or in any bays, harbors or other places therein, having the mokes, meshes or scales of such net less than two inches and three eighths of an inch at least or having any false or double bottom of any description; nor shall any person put any net, though of legal size mesh, upon or behind any other net not of such size mesh for the purpose of catching or taking such herring or herring fry passing a single net of legal size mesh."

and Section 4 of the same Act:

"No person shall between the 20th day of May and the 20th day of October in any year, haul, catch or take herrings or other bait for exportation, within one mile measured by the shore or across the water of any settlement situate between Cape Chapeau Rouge and Point Enragee, near Cape Ray; and any person so hauling, catching or taking, within the said limits, may be examined on oath by a justice, officer of customs or person commissioned for the purpose, as to whether the herrings or other bait are intended for exportation or otherwise, and on refusal to answer or answering untruly, such person shall, on conviction, be subject to the provisions of the twelfth section of this chapter."

are both considered to be in their provisions restrictive of the rights, guaranteed to American fishermen by the XVIII Article of the Treaty of 1871, and the amendment to section 4, by the 39th Vic-

toria, cap. 6 which substitutes the tenth day of May for the twentieth day of April while it modifies the hardship does not remove it.

Section 4 of the latter Act 39 Victoria, cap. 6: "No person shall, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night, haul or take any herring, caplin or squids, with nets, seines, bunts, or any such contrivance or set or put out any such net, seine, bunt or contrivance for the purpose of such hauling or taking."

is in itself objectionable, and as amended by the 40th Victoria, cap. 13 which provides: "That the fourth section of the said recited Act shall be held to include and apply to "the jigging of squids, "and to the use of any contrivance whatever, and to any mode of "taking and obtaining fish for bait."

becomes if possible still more restrictive, and the 1<sup>st</sup> section of 42<sup>th</sup> Victoria, cap. 2 is conceived by this Government to be clearly in contravention of the right of American fishermen under the stipulations of the Treaty. That section is in these words:

"No person shall haul, catch or take herrings by or in a seine or other such contrivance on or near any part of the coast of this colony or its dependencies or in any of the bays, harbors or other places therein, at any time between the twentieth day of October in any year and the eighteenth day of April in the following year or at any time use a seine or other contrivance for the catching and taking of herrings, except by way of shooting and forthwith hauling the same:

"Provided, that nothing herein contained shall prevent the taking of herrings by nets set in the usual and customary manner, and not used for in barring or enclosing herrings in a cove, inlet or other place."

It is true that by the 18th section of cap. 102 Consolidated Statutes of Newfoundland which say that "Nothing in this chapter shall affect the rights and privileges granted by treaty to the subjects of any state or power in amity with Her Majesty." the intention of the Legislature of Newfoundland to hold in due regard the rights of American fishermen under the Treaty is manifested, but the complaint of citizens of the U. S., engaged in the herring fisheries on the coast of Newfoundland, is that this provision has been wholly disregarded by the local ministerial and executive officers, and that while the prohibitory provisions of the Consolidated Statutes were rigidly enforced against American fishermen, the native fishermen were allowed complete immunity in the constant violation of the statutes.

Section 5 of the 42<sup>nd</sup> Victoria cap. 2, provides a summary mode for the execution of the statutes and the enforcement of penalties, namely:

"Any justice of the peace, sub-collector of customs, preventive officer, fishery warden or constable, may board any vessels suspected of carrying herrings in bulk between the twentieth day of October in any year, and the eighteenth day of April in the following year; and in case any such justice, sub-collector, preventive officer, fishery warden or constable shall make signal to any vessel suspected as aforesaid, from any vessel employed by the government, by dipping the ensign at the main peak three times and firing a gun, it shall be the duty of the owner, master or person managing or controlling such vessel so signalled, to heave to such vessel until such justice, sub-collector, preventive officer, fishery warden or constable, shall



“have boarded and examined such last named vessel; and in case of  
 “such master, owner or person managing or controlling as aforesaid  
 “such last named vessel omitting so to heave her to, or to afford facilities for such justice, sub-collector, preventive officer, fishery warden  
 “or constable, boarding such vessel or obstructing such justice, sub-collector, preventive officer, fishery warden or constable, boarding  
 “or examining any such vessel, he shall be subject to a penalty of five  
 “hundred dollars, to be recovered with costs in a summary manner  
 “before a justice of the peace, and in case default shall be made in the  
 “payment of such penalty, such justice shall issue his warrant and  
 “cause such offender to be imprisoned for a period not exceeding  
 “thirty days.”

Americans have been constantly subjected to the surveillance contemplated by that section while Newfoundland fishermen have been not only exempted from its provisions but have been called on by the local officials to aid them in enforcing the statute against American fishing vessels.

The views entertained by the Government of the U. S. on the subject were thus expressed to H. M.'s Government in 1878 by Mr. Evarts who then said:

“This Government conceives that the fishery rights of the United  
 “States conceded by the Treaty of Washington are to be exercised  
 “wholly free from the restraints and regulations of the statutes of  
 “Newfoundland, now set up as authority over our fishermen, and  
 “from every other regulation of fishing now in force or that may  
 “hereafter be enacted by that government.”

The President adheres to the interpretation thus given to the Treaty, and it is evident that so long as these several provisions remain on the statute books of Newfoundland and the disposition of the local officers to discriminate against American fishermen in their enforcement continues, the treaty rights become a nullity and the American fishermen have no security in the pursuit of this great industry.

If the Legislature of Newfoundland cannot dispense with these provisions altogether then this Government conceives that an Act should be passed by it expressly declaring that the provisions enumerated shall have no application to citizens of the U. S. who are now or who may hereafter be engaged in fishing in the waters of Newfoundland under the stipulations of the Treaty of the 8<sup>th</sup> of May 1871, between the United States and Great Britain.

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*Lord Granville to Sir L. S. West.*

FOREIGN OFFICE,  
 July 15. 1882.

SIR,

I have to acknowledge the receipt of your despatch of the 9<sup>th</sup> May last, transmitting a Memo drawn up by the State Dep<sup>t</sup> of the U. S. Gov<sup>t</sup> upon certain Acts of the Legislature of Newfoundland for the regulation of the fisheries in the waters of that Colony.

This Memo was communicated to you by M<sup>r</sup> Frelinghuysen in answer to the request of H. M's Gov<sup>t</sup> to be favored with any sug-

gestions which the U. S. Gov<sup>t</sup> might be prepared to offer with a view to the friendly consideration by the two Gov<sup>ts</sup> of such amendments of the Fishery Regulations as might be reasonably called for in the interests of both countries.

H. M.'s Gov<sup>t</sup> regrets to find that the Memo contains no suggestion of any kind tending to that object, but that it reopens a discussion on the construction of the Treaty of Washington which it was hoped had been exhausted in the previous correspondence.

The Memo cites the following extract from a dispatch written by Mr Evarts in 1787, as representing the views of the U. S. Gov<sup>t</sup>:—

“This Gov<sup>t</sup> conceives that the fishery rights of the U. S. conceded by the Treaty of Washington are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland, now set up as authority over our fishermen, and from every other Regulation now in force, or that may hereafter be enacted by that Government.”

H. M.'s Gov<sup>t</sup> however, have never accepted that construction of the Treaty and on this point I have nothing to add to the views expressed in the Note which I had the honour to address to Mr Lowell on the 27<sup>th</sup> of October 1880.

In that Note I used the following language:—

“Without entering into lengthy discussion on this point, I feel bound to state that, in the opinion of H. M.'s Gov<sup>t</sup>, the clause in the Treaty of Washington which provides that the citizens of the U. S. shall be entitled ‘in common with British subjects,’ to fish in Newfoundland waters within the limits of British Sovereignty, means that the American and the British fishermen shall fish in these waters upon terms of equality and not that there shall be an exemption of American fishermen from any reasonable regulations to which British fishermen are subject.

“H. M.'s Gov<sup>t</sup> entirely concur in Mr Marcy's Circular of the 28<sup>th</sup> of March 1856. The principle therein laid down appears to them perfectly sound, and as applicable to the fishery provisions of the Treaty of Washington as to those of the Treaty which Mr Marcy had in view; they cannot, therefore, admit the accuracy in Mr Evarts' letter to Mr Welsh of the 28<sup>th</sup> Sept<sup>r</sup> 1878, ‘that the fishery rights of the U. S. conceded by the Treaty of Washington are to be exercised wholly free from the restraints and regulations of the Statutes of Newfoundland,’ if by that opinion anything inconsistent with Mr Marcy's principle is really intended. H. M.'s Gov<sup>t</sup>, however, fully admit that, if any such local statutes could be shewn to be inconsistent with the express stipulations, or even with the spirit of the Treaty, they would not be within the category of those reasonable regulations by which American (in common with British) fishermen ought to be bound; and they observe, on the other hand, with much satisfaction that Mr. Evarts, at the close of his letter to Mr Welsh of the 1<sup>st</sup> of August, 1879, after expressing regret at ‘the conflict of interests which the exercise of the Treaty privileges enjoyed by the U. S. appears to have developed,’ expressed himself as follows:—

“‘There is no intention on the part of this (the U. S.) Gov<sup>t</sup> that these privileges should be abused; and no desire that their full and free enjoyment should harm the colonial fishermen.



“While the differing interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the Treaty of 1871 are to be maintained, the U. S. Govt would gladly cooperate with the Govt of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the fisheries at their highest point of production, and of conciliating a community of interest by a just proportion of advantages and profits.”

I expressed the satisfaction with which H. M.'s Govt not only recognized in Mr Evarts' proposal above referred to, an indication that their desire to arrive at a friendly and speedy settlement of the controversy was fully reciprocated by the Govt of the U. S., but also discerned in it the basis of a practical solution of the difficulty; and I assured Mr Lowell of the readiness of H. M.'s Govt to confer with the Govt of the U. S. respecting the establishment of regulations under which the subjects of both parties to the Treaty of Washington should have the full and equal enjoyment of any fishery which, under the Treaty is to be used in common.

The Memo of the U. S. Govt after reviewing certain provisions of the Newfoundland Acts, complains of partiality in their enforcement by the Magistrates and other officials of the Colony (a complaint which H. M.'s Govt cannot admit to be well founded, and in support of which no facts are adduced) and concludes with a suggestion that if the Legislature of Newfoundland cannot dispense with those provisions altogether, it should pass an act expressly declaring that they shall have no application to the citizens of the U. S.

I can only renew the expression of the regret and disappointment which is felt by H. M.'s Govt at the apparent disinclination on the part of the Govt of the U. S. to carry out Mr Evarts' proposal; and I have to instruct you to read this dispatch to Mr Frelinghuysen, and to leave a copy of it with him should he desire it, conveying to him at the same time the hope of H. M.'s Govt that, upon further consideration, the Govt of the U. S. will agree to let the disputed question of Treaty rights remain in abeyance, and will unite with H. M.'s Govt in carrying out the revision of the fishery regulations in the spirit and with the object indicated by Mr Evarts.

I am &c

sd GRANVILLE

The Hon.,

LIONEL S. SACKVILLE WEST,  
etc. etc. etc.

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*Mr. Frelinghuysen to Mr. Lowell.*

No. 564.]

DEPARTMENT OF STATE,  
Washington, April 5, 1883.

SIR: I inclose herewith a copy of a joint resolution providing for the termination of certain articles of the treaty between the United States of America and Her Britannic Majesty, concluded at Washington May 8, 1871, which articles under the protocol signed June 7,

1873, took effect on the 1st day of July, 1873, and, by the terms of the original treaty, are subject to termination by either party on two years' notice given at the expiration of ten years from July 1, 1873. This resolution, which was approved March 3, 1883, directs the President to give notice to the Government of Her Britannic Majesty that the provisions of each and every of the articles No. 18 to No. 25, inclusive, and of Article XXX of the treaty of May 8, 1871, will terminate and be of no force on the expiration of two years next after the time of giving such notice, which the President is further directed to give on the 1st day of July, 1883, or as soon thereafter as may be. You are therefore instructed to comply with the directions of Congress in this matter, as set forth in the resolution, by giving the notice required. As the 1st day of July falls on Sunday, you will give the notice on the next succeeding day, informing the minister of foreign affairs on the receipt of this instruction of its purport and of your contemplated action.

I am, etc.,

FRED'K T. FRELINGHUYSEN.

*Mr. Lowell to Mr. Frelinghuysen.*

No. 563.]

LEGATION OF THE UNITED STATES,  
London, June 6, 1883. (Received June 19.)

SIR: Referring to your instruction No. 564, of the 5th day of April, 1883, I have to acquaint you that on the 18th day of April last, the day of the arrival of the instruction, I addressed a note to Lord Granville in compliance with its terms, informing him of the action I should take on the 2d of July next in obedience to a resolution of both houses of Congress of the United States, in giving notice of the termination of Articles XVIII to XXV, inclusive, and Article XXX of the treaty of May 8, 1871, between the United States and Great Britain; and that on the 28th of April last I received a reply from his lordship, acknowledging the reception of my note.

I beg to inclose herewith a copy of this correspondence.

I have, &c.,

J. R. LOWELL.

[Inclosure No. 1.]

*Mr. Lowell to Lord Granville.*

LEGATION OF THE UNITED STATES,  
London, April 18, 1883.

MY LORD: I have received to-day, from Mr. Frelinghuysen, a dispatch inclosing the copy of a joint resolution of both houses of Congress of the United States, providing for the termination of certain articles of the treaty between the United States of America and Her Britannic Majesty, concluded at Washington, May 8, 1871, which articles, under the protocol signed June 7, 1873, took effect on the 1st day of July, 1873, and, by the terms of the original treaty, are subject to termination by either party on two years' notice, given at the expiration of ten years from July 1, 1873. This resolution, which was approved March 3, 1883, directs the President to give notice to the



Government of Her Britannic Majesty that the provisions of each and every of the articles numbered 18 to 25, inclusive, and of Article XXX of the treaty May 8, 1871, will terminate and be of no force on the expiration of two years next of after the time of giving such notice, which the President is further directed to give on the 1st day of July, 1883, or as soon thereafter as may be.

I am therefore instructed to comply with the directions of Congress in this matter, as set forth in the resolution, by giving the notice required; and, as the 1st day of July falls on Sunday, I am directed to give this notice on the next succeeding day. I beg, also, in compliance with further directions, to inform your lordship of the purport of this instruction, and of my contemplated action under it.

I have, &c.,

J. R. LOWELL.

[Inclosure No. 2.]

*Lord Granville to Mr. Lowell.*

FOREIGN OFFICE, *April 27, 1883.*

SIR: I have the honor to acknowledge the receipt of your note of the 18th instant, in which you acquaint me that, in compliance with the instructions you have received from your Government, you propose to give notice on Monday, the 2d of July (the 1st July falling on a Sunday), of the intention of the United States to terminate Articles XVIII to XXV, inclusive, and Article XXX of the treaty of the 8th May, 1871, between Great Britain and the United States, which will cease to be in force on the expiration of two years from the date of such notice being given.

I have, &c.

GRANVILLE.

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*Mr. Lowell to Lord Granville.*

LEGATION OF THE UNITED STATES,  
*London, July 2, 1883.*

MY LORD: Referring to my note to your lordship of the 18th of April last, and to your lordship's reply of the 27th of the same month, I have the honor to recapitulate the statements I made in that note to the following effect: That I received on the said 18th of April a dispatch from Mr. Frelinghuysen, inclosing a copy of a joint resolution of both houses of Congress of the United States, providing for the termination of certain articles of the treaty between the United States of America and Her Britannic Majesty, concluded at Washington, May 8, 1871, which articles, under the protocol signed June 7, 1873, took effect on the 1st day of July, 1873, and by the terms of the original treaty, are subject to termination by either party on two years' notice, given at the expiration of ten years from July 1, 1873. This resolution, which was approved March 3, 1883, directs the President to give notice to the Government of Her Britannic Majesty that the provisions of each and every of the articles numbered XVIII to XXV, inclusive, and of Article XXX of the treaty of May 8, 1871, will terminate and be of no force on the expiration of two years next after the time of giving such

notice, which the President is further directed to give on the 1st day of July, 1883, or as soon thereafter as may be.

I am, therefore, instructed by the President of the United States to comply with the directions of Congress in this matter as set forth in the resolution, by giving the notice required; and as the 1st day of July falls on Sunday, I am further instructed to give this notice on the succeeding day.

I do, therefore, this 2d day of July, in the year 1883, on behalf of the President of the United States, hereby give notice to the Government of Her Britannic Majesty that the provisions of each and every of the articles numbered XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, and XXX of the treaty of May 8, 1871, between the United States of America and Her Britannic Majesty, will terminate and be of no force on the expiration of two years next after the time of giving notice.

I have, &c.

J. R. LOWELL.

*Lord Granville to Mr. Lowell.*

FOREIGN OFFICE, *August 22, 1883.*

SIR: I have the honor to acknowledge the receipt of your note of the 2d ultimo, in which you give notice that the provisions of Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, and XXX of the treaty of May 8, 1871, between Great Britain and the United States, will terminate and be of no force on the expiration of two years next after the date of the said notice.

In accepting this notice on behalf of Her Majesty's Government, I have the honor to inquire whether Her Majesty's Government correctly understand the intention of the United States Government to be that the provisions of Article XXXII, which relate to Newfoundland, shall cease to be in force and operation at the same time as the articles recited in the notice, which relate to the Dominion of Canada.

I have, &c.

GRANVILLE.

*Mr. Lowell to Lord Granville.*

LEGATION OF THE UNITED STATES,  
*London, August 23, 1883.*

MY LORD: I have the honor to acknowledge the reception of your lordship's note of yesterday, in which you inquire whether in accepting the notice which I have given to Her Majesty's Government, under the instructions of the Department of State, that the provisions of Articles XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, and XXX of the treaty of May 8, 1871, between the United States and Great Britain, will terminate and be of no force on the expiration of two years next after the date of said notice. Her Majesty's Government correctly understands the intention of the United States Government to be, that the provisions of Article XXXII which relate to Newfoundland shall cease to be in force and operation at the same time as the articles recited in the notice which relate to the Dominion of Canada.



I beg to state, in reply, that I have transmitted your lordship's inquiry to the Department of State, and shall have the honor of addressing your lordship another communication on the subject as soon as I receive an answer.

I have, &c.

J. R. LOWELL.

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*Mr. West to Mr. Frelinghuysen.*

BRITISH EMBASSY,  
Washington, 9 October 1883.

SIR: Referring to a communication from Earl Granville conveyed to me in a despatch copy of which I had the honor to place in your hands on the 3rd of August<sup>a</sup> of last year respecting the revision of the Fishery regulations, I have the honor to inform you that His Lordship has requested me again to bring this matter before the United States Government.

Although notice has been given by the United States Government of their intention to terminate the fishery Articles of the Treaty of Washington in two years time from the 1st of July last no further communication has been as yet received by Her Majesty's Government relative to the proposed revision of the regulations for the protection of the fisheries in Newfoundland waters, and Her Majesty's Government are anxious that in the interval no cause of difference should arise between the fishermen of Newfoundland and those of the United States who may resort to those waters.

They would be glad therefore, to know the views of the Government of the United States on the proposed revision. At the same time Her Majesty's Government hope that in the interval before the termination of the Fishery Articles in question, the Government of the United States will agree to let the disputed question of Treaty rights remain in abeyance and will unite with Her Majesty's Government in carrying out the revision of the Fishery regulations in the spirit and with the object indicated by Mr. Evarts in his letter to Mr. Welsh of the 1st of August, 1879, in which it is said that "there is no intention on the part of the United States Government that privileges should be abused and no desire that their full and free enjoyment should harm the Colonial fishermen. While the different interests and methods of the shore fishery and the vessel fishery make it impossible that the regulation of the one should be entirely given to the other, yet if the mutual obligations of the Treaty of 1871 are to be maintained, the United States Government would gladly co-operate with the Government of Her Britannic Majesty in any effort to make those regulations a matter of reciprocal convenience and right, a means of preserving the Fisheries at their highest point of production and of conciliating a community of interest by a just proportion of advantages and profits."

In expressing therefore the hope on the part of Her Majesty's Government that this matter may receive the early consideration of

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<sup>a</sup> See Granville to West, July 15, 1882, *ante*, p. 745.

the Government of the United States I have the honor to be with the highest consideration

Sir, your obedient servant,

L. S. SACKVILLE WEST.

*Mr. Lowell to Mr. Frelinghuysen.*

No. 693.]

LEGATION OF THE UNITED STATES,  
*London, January 17, 1884.* (Received February 2.)

SIR: Referring to your instruction No. 688, of October 16, 1883, I have the honor to inclose a copy of the correspondence, since the reception of that dispatch, between this legation and the foreign office, in reference to the termination of certain articles of the treaty of May 8, 1871.

It will be seen by Lord Granville's note that Her Majesty's Government accept the notice of the termination of these articles of the treaty as applying to Newfoundland as well as to the Dominion of Canada.

I have, &c.

J. R. LOWELL.

[Inclosure No. 1.]

*Mr. Lowell to Lord Granville.*

LEGATION OF THE UNITED STATES,  
*London, November 16, 1883.*

MY LORD: Referring to your lordship's note of the 22d of August last, in which your lordship inquired whether, in accepting the notice which I gave to Her Majesty's Government, on the 2d of July last, that the provisions of articles 18, 19, 20, 21, 22, 23, 24, 25, and 30 of the treaty of May 8, 1871, between the United States and Great Britain, will terminate and be of no force on the expiration of two years from the date of said notice, Her Majesty's Government correctly understand the intention of the United States Government to be that the provisions of article 32, which relate to Newfoundland, shall cease to be in force and operation at the same time as the articles recited in the notice which relate to the Dominion of Canada, I have the honor to acquaint you that I lost no time in transmitting a copy of your lordship's note to the Department of State.

I have now received a reply from Mr. Frelinghuysen, in which I am instructed to inform your lordship that Her Majesty's Government correctly understand the intention of the Government of the United States to be that the provisions of article 32 of the treaty of Washington, which relate to Newfoundland, shall cease to be in force and operation at the same time as the articles recited in the notice of the termination given by me on the 2d of July last which relate to the Dominion of Canada.

Mr. Frelinghuysen states that your lordship's inquiry does not appear to invite any discussion of the points involved, or to ask anything more than a simple declaration of the intention of the United States Government as to the scope of the notice of the termination so given. He states, however, for my information, the reasons why the thirty-second article must be considered as in force so long as



the other articles which are specifically terminable are in force. As his views on this subject may be interesting to your lordship, I venture to send you a copy of his dispatch, although I have no instruction to do so.

I have, &c.

J. R. LOWELL.

[Inclosure No. 2.]

*Lord Granville to Mr. Lowell.*

FOREIGN OFFICE, *January 16, 1884.*

SIR: I have the honor to acknowledge the receipt of your note of the 16th of November last, in which you state that it is the intention of the Government of the United States that the provisions of article 32 of the treaty of Washington, which relate to Newfoundland shall cease to be in force and operation at the same time as the articles recited in the notice of termination given by you on the 2d of July last which relate to the Dominion of Canada.

I have to state to you, in reply, that Her Majesty's Government accept this notice as applying to Newfoundland as well as to the Dominion of Canada.

I have, &c.,

GRANVILLE.

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*Mr. Frelinghuysen to Mr. West.*

DEPARTMENT OF STATE,

*Washington, July 11, 1884.*

SIR: Referring to your note of the 9th of October last, concerning the revision of the fishery treaty, and adverting to the language of the President's last annual message to Congress relative to appointing a Commission to consider the subject, I now have the honor to inform you that Congress has adjourned without reaching any action on the President's recommendation. In such an important international question, in which Congress has intervened at every stage hitherto, it is deemed best to defer definite action on the British proposal until December.

I have, &c.,

FRED'K. T. FRELINGHUYSEN.

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*Mr. West to Mr. Frelinghuysen.*

WASHINGTON, *July 12, 1884.*

(Received July 14.)

SIR: I have the honor to acknowledge the receipt of your note of the 11th instant, and to inform you that I have duly notified to Her Majesty's Government that it is deemed best not to take any definite action with regard to the fisheries articles of the treaty of Washington until December next.

I have, &c.

L. S. SACKVILLE-WEST.

*Lord Lansdowne to Earl Granville.*

OTTAWA, 3rd March, 1886.

MY LORD: With reference to my despatch of the 18th ultimo in which I pointed out that effectual measures would be taken by my Government to protect Canadian fishermen in the exercise of their rights within the territorial waters of the Dominion, and to prevent trespass within the limits of those waters by foreign fishermen, I have to acquaint Your Lordship that authority has now been requested by my Minister of Marine and Fisheries to establish a sufficient marine police force for the purpose of affording efficient protection to the interests of the Dominion within its territorial waters.

2. With this object my Government have determined, besides making use of the Government steamers already available for that purpose, to charter and equip six swift sailing fore and aft schooners between 60 and 90 tons measurement, for use as fisheries police vessels. For this purpose, \$50,000 will be placed in the supplementary estimates to be submitted to Parliament for the current fiscal year, and a further sum of \$100,000 for the fiscal year ending 30th June, 1887.

I have, &amp;c.,

(Sd.)

LANSDOWNE.

Earl GRANVILLE.

*The Earl of Rosebery to Sir L. West.*

FOREIGN OFFICE, March 18, 1886.

SIR, From the reports which have been received in this country Her Majesty's Government conclude that the Government of the United States will not propose the appointment of an International Commission to settle the North American Fisheries question, as contemplated in the temporary arrangement concluded last summer.

Whilst Her Majesty's Government regret that they will thus be deprived of a favourable opportunity for the settlement of this long-standing question on equitable terms, they desire by every means in their power to avoid any friction which might be caused by the cessation of the privileges lately enjoyed by United States' fishermen.

I have therefore to request that you will sound Mr. Bayard as to whether the United States' Government propose to issue a Notice warning United States' fishermen that they are now precluded from fishing in British North American territorial waters, as Her Majesty's Government are now considering the propriety of issuing a similar Notice with regard to British fishermen in United States' waters.

I have instructed you in this sense by telegraph to day.

I am, &amp;c.

ROSEBERY.

Sir L. WEST.



*Sir L. West to Mr. Bayard.*

WASHINGTON, *March 19, 1886.*

(Received March 20.)

SIR: I have the honor to inform you that the Earl of Rosebery has requested me to ascertain whether it is intended to give notice to the United States fishermen that they are now precluded from fishing in British North American territorial waters, as Her Majesty's Government are considering the expediency of issuing a reciprocal notice with regard to British fishermen in American waters.

I have, &c.,

L. S. SACKVILLE WEST.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, *March 23, 1886.*

SIR: I have the honor to acknowledge the receipt of your note of the 19th instant, whereby you inform me that you have been requested by the Earl of Rosebery to ascertain "whether it is intended to give notice to the United States fishermen that they are now precluded from fishing in British North American territorial waters," and to inform you, in reply, that as full and formal public notification in the premises has already been given by the President's proclamation of 31st January, 1885, it is not now deemed necessary to repeat it.

The temporary arrangement made between us on the 22d of June, 1885, whereby certain fishing operations on the respective coasts were not to be interfered with during the fishing season of 1885, notwithstanding the abrogation of the fishery articles of the treaty of Washington, came to an end under its own expressed limitation on the 31st of December last, and the fisheries question is now understood to rest on existing treaties, precisely as though no fishery articles had been incorporated in the treaty of Washington.

In view of the enduring nature and important extent of the rights secured to American fishermen in British North American territorial waters under the provisions of the treaty of 1818, to take fish within the three-mile limit on certain defined parts of the British North American coasts, and to dry and cure fish there under certain conditions, this Government has not found it necessary to give to United States fishermen any notification that "they are now precluded from fishing in British North American territorial waters."

I have, &c.,

T. F. BAYARD.

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*Sir L. West to Mr. Bayard.*

BRITISH LEGATION,  
Washington, *March 24, 1886.* (Received March 25.)

SIR: I have the honor to acknowledge the receipt of your note of the 23d instant, in reply to mine of the 19th, informing me that, as full and formal public notification in the premises has already been

given by the President's proclamation of the 31st January, 1885, it has not been found necessary to give to United States fishermen any further notification that they are now precluded from fishing in British North American territorial waters. I have duly informed Her Majesty's Government and the Government of the Dominion of this decision.

I have, &c.,

L. S. SACKVILLE WEST.

*Lord Lansdowne to Earl Granville.*

OTTAWA, 25th March, 1886.

MY LORD: I have the honour to forward for your information a copy of the instructions which have been issued by my Minister of Marine and Fisheries for the guidance of fishery officers and *ex-officio* magistrates in command of the vessels which will be employed for the protection of the inshore fisheries of the Dominion.

These instructions are substantially the same as those which were issued under similar circumstances in 1870.

Your Lordship will observe that while the officers in command of the fisheries police vessels are required to take the necessary steps for strictly upholding the Treaty rights of the Dominion they are specially enjoined to carry out their instructions in a conciliatory spirit and with forbearance and discrimination.

I also enclose copy of a warning notice which was published in reference to the same subject by the Department of Fisheries.

I have, &c.,

(Sd.)

LANSDOWNE.

The Right Honourable,

EARL GRANVILLE, K. G., &c.

[Enclosure No. 1.]

*Special instructions to Fishery Officers, ex-officio Magistrates, in command of Government Steamers and Vessels, engaged as Fisheries Police Vessels, in protecting the Inshore Fisheries of Canada.*

OTTAWA, 16th March, 1886.

SIR: In the performance of the special and important service to which you have been appointed you will be guided by the following confidential instructions.

For convenience of reference, these have been divided under the different headings of *Powers, Jurisdiction, Duties and General Directions*.

#### POWERS.

The Powers with which you are invested, are derived from, and to be exercised in accordance with the following statutes, among others:—"The Fisheries Act" (31 Vic., cap. 60, of Canada); "An Act respecting Fishing by Foreign Vessels," (31 Vic., cap. 61, of Canada), and the subsequent statute entitled: "An Act to amend the Act respecting Fishing by Foreign Vessels," made and passed



the 12th May, 1870 (33 Vic., cap. 15, of Canada); also an "Act to further amend the said Act" (34 Vic., cap. 23, of Canada).

"Chapter 94 of the Revised Statutes (third series) of Nova Scotia" (of the "Coast and Deep Sea Fisheries"), amended by the Act entitled: "An Act to amend Cap. 94 of the Revised Statutes of Nova Scotia." (29 Vic., cap. 35.)

An Act passed by the Legislature of the Province of New Brunswick entitled: "An Act relating to the Coast Fisheries, and for the prevention of Illicit Trade" (16 Vic., cap. 69).

Also an Act passed by the Legislature of Prince Edward Island (6 Vic., cap. 14) entitled: "An Act relating to the Fisheries, and for the prevention of Illicit Trade in Prince Edward Island, and the coasts and harbors thereof."

Also, from such regulations as have been passed or may be passed by the Governor General in Council, or from instructions from the Department of Fisheries, under "The Fisheries Act," hereinbefore cited.

As Fishery Officer you have full authority to compel the observance of the requirements of the *Fisheries Acts* and regulations by foreign fishing vessels and fishermen in those parts of the coasts of Canada to which, by the Convention of 1818, they are admitted to privileges of taking or drying and curing fish concurrent with those enjoyed by British fishing vessels and fishermen.

You will receive instructions from the Customs Department authorizing you to act as an officer of the Customs, and in that capacity you are to see that the Revenue Laws and Regulations are duly observed.

#### JURISDICTION.

Your jurisdiction with respect to any action you may take against foreign fishing vessels and citizens engaged in fishing is to be exercised only within the limits of "three marine miles" of any of "the coasts, bays, creeks or harbours," of Canada.

With regard to the Magdalen Islands, although the liberty to land and to dry and cure fish there is not expressly given by the terms of the convention to United States fishermen, it is not at present intended to exclude them from these islands.

#### DUTIES.

It will be your duty to protect the inshore fisheries of Canada in accordance with the conditions laid down by the Convention of the 20th October, 1818, the first Article of which provides:

"Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof to take, dry, and cure fish, on certain coasts, bays, harbours, and creeks, of His Britannic Majesty's dominions in America, it is agreed between the High Contracting Parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of his Britannic Majesty, the liberty to take fish of every kind, on that part of the Southern Coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the Western and Northern Coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays,

harbours and creeks from Mount Joly, on the Southern Coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbours and creeks of the Southern part of the Coast of Newfoundland, hereabove described, and of the Coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground."

"And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter and repairing of damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

By this you will observe, United States fishermen are secured the liberty of taking fish on the Southern Coasts of Labrador, and around the Magdalen Islands and of drying and curing fish along certain of the Southern Shores of Labrador, where this coast is unsettled, or if settled, after previous agreement with the settlers or owners of the ground.

In all other parts the exclusion of foreign vessels and boats is absolute, so far as fishing is concerned, and is to be enforced within the limits laid down by the Convention of 1818, they being allowed to enter bays and harbours for four purposes only, viz.,—*for shelter, the repairing of damages, the purchasing of wood, and to obtain water.*

You are to compel, if necessary, the maintenance of peace and good order by foreign fishermen pursuing their calling and enjoying concurrent privileges of fishing or curing fish with British fishermen, in those parts to which they are admitted by the Treaty of 1818.

You are to see that they obey the laws of the country, that they do not molest British fishermen in the pursuit of their calling and that they observe the regulations of the fishery laws in every respect.

You are to prevent foreign fishing vessels and boats which enter bays and harbors for the four legal purposes above mentioned, from taking advantage thereof, to take, dry or cure fish therein, to purchase bait, ice, or supplies, or to tranship cargoes, or from transacting any business in connection with their fishing operations.

It is not desired that you should put a narrow construction on the term "unsettled." Places containing a few isolated houses might not, in some instances, be susceptible of being considered as "settled" within the meaning and purpose of the Convention. Something would, however, depend upon the facts of the situation and circumstances of the settlement. Private and proprietary rights form an element in the consideration of this point. *The generally conciliatory spirit in which it is desirable that you should carry out*



*these instructions, and the wish of Her Majesty's Government that the rights of exclusion should not be strained*, must influence you in making as fair and liberal an application of the term as shall consist with the just claims of all parties.

Should interference with the pursuits of British fishermen or the property of Canadians appear to be inseparable from the exercise of such indulgence, you will withhold it and insist upon entire exclusion.

United States fishermen should be made aware that, in addition to being obliged, in common with those subjects of Her Majesty with whom they exercise concurrent privileges of fishing in Colonial waters, to obey the laws of the country, and particularly such Acts and Regulations as exist to ensure the peaceable and profitable enjoyment of the fisheries by all persons entitled thereto, they are peculiarly bound to preserve peace and order in the *quasi*-settled places to which, by the liberal disposition of Canadian authorities, they may be admitted.

Wheresoever foreigners may fish in Canadian waters, you will compel them to observe the Fishery Laws. Particular attention should be directed to the injury which results from cleaning fish on board their vessels while afloat, and the throwing overboard of offals, thus fouling the fishing, feeding and breeding grounds. "The Fisheries Act" (Section 14) provides a heavy penalty for this offence.

Take occasion to enquire into and report upon any modes of fishing, or any practices adopted by foreign fishermen, which appear to be injurious to the fisheries.

#### GENERAL DIRECTIONS.

You will accost every foreign fishing vessel within the limits described, and if that vessel should be either fishing, preparing to fish, or should obviously have been fishing within the prohibited limits, you will by virtue of the authority conferred upon you by your Commission, and under the provisions of the Acts above recited, seize at once (resort to force in doing so being only justifiable after every other effort has failed) any vessel detected in violating the law and send her or take her into port for condemnation.

Copies of the Acts of Parliament subjecting to seizure and forfeiture any foreign ship, vessel or boat which should be either fishing, preparing to fish or should obviously have been fishing within the prohibited limits, and providing for carrying out the seizure and forfeiture are furnished herewith for your information and distribution.

Should you have the occasion to compel any foreign fishing vessels or fishermen to conform to the requirements of the "Fisheries Act and regulations," as regards the modes and incidents of fishing, at those places to which they are admitted under the Convention of 1818, particularly in relation to ballast, fish offals, setting of nets, hauling of seines, and use of "trawls" or "bultows" more especially at and around the Magdalen Island, your power and authority under such cases will be similar to that of any other fishery officer appointed to enforce the Fishery Laws in Canadian waters. (Vide Fisheries Act.)

If a foreign ship, vessel, or boat be found violating the Convention or resisting consequent seizure, and momentarily effects her escape

from the vicinity of her capture or elsewhere, she remains always liable to seizure and detention if met by yourself in Canadian waters, and in British waters everywhere if brought to account by Her Majesty's cruisers. But great care must be taken to make certain of the identity of any offending vessel to be so dealt with.

All vessels seized must be placed, as soon as possible, in the custody of the nearest Customs Collector, and information, with a statement of the facts, and the depositions of your sailing master, clerk, lieutenant, or mate, and of two at least of the most reliable of your crew be despatched with all possible diligence to the Government. Be careful to describe the exact locality where the violation of the law took place, and the ship, vessel, or boat was seized. Also corroborate the bearings taken, by soundings, and by buoying the place (if possible) with a view to actual measurements, and make such incidental reference to conspicuous points and land marks as shall place beyond doubt the illegal position of the seized ship, vessel or boat.

Omit no precaution to establish on the spot that the trespass was or is being committed within three miles of land.

As it is possible that foreign fishing craft may be driven into Canadian waters by violent or contrary winds, by strong tides, through misadventure, or some other cause independent of the will of the master and crew, you will consider these circumstances, and satisfy yourself with regard thereto before taking the extreme step of seizing or detaining any vessel.

On capture, it will be desirable to take part of the foreign crew aboard the vessel under your command, and place some of your own crew, as a measure of precaution on board the seized vessel; first lowering the foreign flag borne at the time of capture. If your ordinary complement of men does not admit of this being done, or if because of several seizures the number of your hands might be too much reduced, you will in such emergency endeavor to engage a few trustworthy men. The portion of foreign crew taken on board the Government vessel you will land at the nearest place where a Consul of the United States is situated, or where the readiest conveyance to any American Consulate in Canada may be reached, and leave them there.

When any of Her Majesty's vessels about the fishing stations or in port are met with, you should, if circumstances permit, go on board and confer with the Naval Commander, and receive any suggestions he may feel disposed to give, which do not conflict with these instructions, and afford him any information you may possess about the movements of foreign craft; also inform him what vessels you have accosted and where.

Do not fail to make a full entry of all circumstances connected with foreign fishing vessels, noting their names, tonnage, ownership, crew, port, place of fishing, cargo, voyage, and destination, and (if ascertainable) their catch. Report your proceedings as often as possible, and keep the Department fully advised on every opportunity, where instructions would most probably reach you at stated intervals.

Directions as to the stations and limits on which you are to cruise, and any further instructions that may be deemed necessary, will from time to time be conveyed to you.



Considerable inconvenience is caused by Canadian fishing vessels neglecting to show their colours. You will draw the attention of masters to this fact, and request them to hoist their colours without requiring to be hailed and boarded.

It cannot be too strongly urged upon you, nor can you too earnestly impress upon the officers and crew under your command, that the service in which you and they are engaged should be performed with forbearance and discrimination.

The Government relies on your prudence, discretion and firmness in the performance of the special duties entrusted to you.

I am, Sir,

Your obedient servant,

(Sd.)

GEORGE E. FOSTER,  
*Minister of Marine and Fisheries.*

[Enclosure No. 2.]

*Warning.—To all whom it may concern.*

The Government of the United States having by notice terminated Articles 18 to 25, both inclusive, and Article 30, known as the Fishery Articles, of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain, signed at London on the 20th October, 1818:

Article 1st. "Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry and cure fish, on certain coasts, bays, harbours and creeks, of His Britannic Majesty's dominions in America, it is agreed between the high Contracting Parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbors and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground."

"And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish, on or within three marine miles, of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America, not included within the above-mentioned limits; provided,

"however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and of repairing damages therein, of purchasing wood, of obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any manner whatever abusing the privileges hereby reserved to them."

Attention is also called to the following provisions of the Act of the Parliament of Canada, Cap. 61, of the Acts of 1868, entitled "*An Act respecting fishing for foreign vessels.*"

2nd. "Any commissioned officer of her Majesty's Navy, serving on board of any vessel of Her Majesty's Navy, cruising and being in the waters of Canada for purpose of affording protection to Her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's Navy, Fishery Officer, or Stipendiary Magistrate on board of any vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the fisheries, or any officer of the Customs of Canada, Sheriff, Magistrate or other person duly commissioned for that purpose, may go on board of any ship, vessel or boat, within any harbor in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creek or harbors in Canada, and stay on board so long as she may remain within such place or distance."

3rd. "If such ship, vessel or boat be bound elsewhere, and shall continue within such harbor, or so hovering for twenty-four hours after the Master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel or boat into port and search her cargo, and may also examine the Master upon oath touching the cargo and voyage; and if the Master, or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks, or harbors of Canada, not included within the above-mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel, or boat under the first section of this Act, such ship, vessel or boat, and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited."

4th. "All goods, ships, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act; and every person opposing any officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years."

Therefore be it known, that by virtue of the Treaty Provisions and Act of Parliament, above recited, all foreign vessels, or boats, are forbidden from fishing or taking fish by any means whatever within three marine miles of any of the coasts, bays, creeks and harbors in Canada, or to enter such bays, harbors and creeks, except for the pur-



pose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever;

Of all of which you will take notice and govern yourself accordingly.

(Sd.)                      GEORGE E. FOSTER,  
*Minister of Marine and Fisheries.*

DEPARTMENT OF FISHERIES,  
*Ottawa, 5th March, 1886.*

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*Mr. Bayard to Sir. L. West.*

DEPARTMENT OF STATE,  
*Washington, May 10, 1886.*

SIR: On the 6th instant I received from the consul-general of the United States at Halifax a statement of the seizure of an American schooner, the *Joseph Story*, of Gloucester, Mass., by the authorities at Baddeck, Cape Breton, and her discharge after a detention of twenty-four hours.

On Saturday, the 8th instant, I received a telegram from the same official announcing the seizure of the American schooner *David J. Adams*, of Gloucester, Mass., in the Annapolis Basin, Nova Scotia, and that the vessel had been placed in the custody of an officer of the Canadian steamer *Lansdowne* and sent to St. John, New Brunswick, for trial.

As both of these seizures took place in closely landlocked harbors, no invasion of the territorial waters of the British Provinces, with the view of fishing there, could well be imagined; and yet the arrests appear to have been based upon the act or intent of fishing within waters as to which, under the provision of the treaty of 1818 between Great Britain and the United States of America, the liberty of the inhabitants of the United States to fish has been renounced.

It would be superfluous for me to dwell upon the desire which, I am sure, controls those respectively charged with the administration of the Governments of Great Britain and of the United States to prevent occurrences tending to create exasperation, or unneighborly feeling, or collision between the inhabitants of the two countries; but, animated with this sentiment, the time seems opportune for me to submit some views for your consideration, which I confidently hope will lead to such administration of the laws regulating the commercial interests and the mercantile marine of the two countries as may promote good feeling and mutual advantage, and prevent hostility to commerce under the guise of protection to inshore fisheries.

The treaty of 1818 is between two nations, the United States of America and Great Britain, who, as the contracting parties, can alone apply authoritative interpretation thereto, or enforce its provisions by appropriate legislation.

The discussion prior to the conclusion of the treaty of Washington in 1871 was productive of a substantial agreement between the two countries as to the existence and limit of the three marine miles within the line of which, upon the regions defined in the treaty of

1818, it should not be lawful for American fishermen to take, dry, or cure fish. There is no hesitancy upon the part of the Government of the United States to proclaim such inhibition and warn their citizens against the infraction of the treaty in that regard, so that such in-shore fishing cannot lawfully be enjoyed by an American vessel being within three marine miles of the land.

But since the date of the treaty of 1818, a series of laws and regulations importantly affecting the trade between the North American Provinces of Great Britain and the United States have been, respectively, adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants.

This independent and yet concurrent action by the two Governments has effected a gradual extension, from time to time, of the provisions of Article I of the convention of July 3, 1815, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the results of that treaty.

President Jackson's proclamation of October 5, 1830, created a reciprocal commercial intercourse, on terms of perfect equality of flag, between this country and the British American dependencies, by repealing the navigation acts of April 18, 1818, May 15, 1820, and March 1, 1823, and admitting British vessels and their cargoes "to an entry in the ports of the United States from the islands, provinces, and colonies of Great Britain on or near the American continent, and north or east of the United States." These commercial privileges have since received a large extension in the interests of propinquity, and in some cases favors have been granted by the United States without equivalent concession. Of the latter class is the exemption granted by the shipping act of June 26, 1884, amounting to one-half of the regular tonnage-dues on all vessels from the British North American and West Indian possessions entering ports of the United States. Of the reciprocal class are the arrangements for transit of goods, and the remission, by proclamation, as to certain British ports and places of the remainder of the tonnage-tax, on evidence of equal treatment being shown to our vessels.

On the other side, British and colonial legislation, as notably in the case of the imperial shipping and navigation act of June 26, 1849, has contributed its share toward building up an intimate intercourse and beneficial traffic between the two countries founded on mutual interest and convenience.

These arrangements, so far as the United States are concerned, depend upon municipal statute and upon the discretionary powers of the Executive thereunder.

The seizure of the vessels I have mentioned, and certain published "warnings" purporting to have been issued by the colonial authorities, would appear to have been made under a supposed delegation of jurisdiction by the Imperial Government of Great Britain, and to be intended to include authority to interpret and enforce the provisions of the treaty of 1818, to which, as I have remarked, the United States and Great Britain are the contracting parties, who can alone deal responsibly with questions arising thereunder.



The effect of this colonial legislation and Executive interpretation, if executed according to the letter, would be not only to expand the restrictions and renunciations of the treaty of 1818, which related solely to inshore fishery within the three-mile limit, so as to affect the deep-sea fisheries, the right to which remained unquestioned and unimpaired for the enjoyment of the citizens of the United States, but further to diminish and practically to destroy the privileges expressly secured to American fishing vessels to visit those inshore waters for the objects of shelter, repair of damages, and purchasing wood, and obtaining water.

Since 1818, certain important changes have taken place in fishing in the regions in question, which have materially modified the conditions under which the business of inshore fishing is conducted and which must have great weight in any present administration of the treaty.

Drying and curing fish, for which a use of the adjacent shores was at one time requisite, is now no longer followed, and modern invention of processes of artificial freezing, and the employment of vessels of a larger size, permit the catch and direct transportation of fish to the markets of the United States without recourse to the shores contiguous to the fishing grounds.

The mode of taking fish inshore has also been wholly changed, and from the highest authority on such subjects I learn that bait is no longer needed for such fishing, that purse-seines have been substituted for the other methods of taking mackerel, and that by their employment these fish are now readily caught in deeper waters entirely exterior to the three-mile line.

As it is admitted that the deep-sea fishing was not under consideration in the negotiation of the treaty of 1818, nor was affected thereby, and as the use of bait for inshore fishing has passed wholly into disuse, the reasons which may have formerly existed for refusing to permit American fishermen to catch or procure bait within the line of a marine league from the shore lest they should also use it in the same inhibited waters for the purpose of catching other fish, no longer exist.

For it will, I believe, be conceded as a fact that bait is no longer needed to catch herring or mackerel, which are the objects of inshore fishing, but is used, and only used, in deep-sea fishing, and, therefore, to prevent the purchase of bait or any other supply needed in deep-sea fishing, under color of executing the provisions of the treaty of 1818, would be to expand that convention to objects wholly beyond its purview, scope, and intent, and give to it an effect never contemplated by either party, and accompanied by results unjust and injurious to the citizens of the United States.

As, therefore, there is no longer any inducement for American fishermen to "dry and cure" fish on the interdicted coasts of the Canadian Provinces, and as bait is no longer used or needed by them [for the prosecution of inshore fishing] in order to "take" fish in the inshore waters to which the treaty of 1818 alone relates, I ask you to consider the results of excluding American vessels, duly possessed of permits from their own Government to touch and trade at Canadian ports as well as to engage in deep sea-fishing, from exercising freely

the same customary and reasonable rights and privileges of trade in the ports of the British colonies as are freely allowed to British vessels in all the ports of the United States under the laws and regulations to which I have adverted.

Among these customary rights and privileges may be enumerated the purchase of ship-supplies of every nature, making repairs, the shipment of crews in whole or part, and the purchase of ice and bait for use in deep-sea fishing.

Concurrently, these usual rational and convenient privileges are freely extended to and are fully enjoyed by the Canadian merchant marine of all occupations, including fishermen in the ports of the United States.

The question therefore arises whether such a construction is admissible as would convert the treaty of 1818 from being an instrumentality for the protection of the inshore fisheries along the described parts of the British American coast into a pretext or means of obstructing the business of deep-sea fishing by citizens of the United States, and of interrupting and destroying the commercial intercourse that since the treaty of 1818, and independent of any treaty whatever, has grown up and now exists under the concurrent and friendly laws and mercantile regulations of the respective countries.

I may recall to your attention the fact that a proposition to exclude the vessels of the United States engaged in fishing from carrying also merchandise was made by the British negotiators of the treaty of 1818, but being resisted by the American negotiators was abandoned. This fact would seem clearly to indicate that the business of fishing did not then, and does not now, disqualify a vessel from also trading in the regular ports of entry.

I have been led to offer these considerations by the recent seizures of American vessels to which I have adverted and by indications of a local spirit of interpretation in the Provinces, affecting friendly intercourse, which is, I firmly believe, not warranted by the terms of the stipulations on which it professes to rest. It is not my purpose to prejudge the facts of the cases, nor have I any desire to shield any American vessel from the consequences of violation of international obligation. The views I advance may prove not to be applicable in every feature to those particular cases, and I should be glad if no case whatever were to arise calling in question the good understanding of the two countries in this regard in order to be free from the grave apprehensions which otherwise I am unable to dismiss.

It would be most unfortunate, and, I cannot refrain from saying, most unworthy, if the two nations who contracted the treaty of 1818 should permit any questions of mutual right and duty under that convention to become obscured by partisan advocacy or distorted by the heat of local interests. It cannot but be the common aim to conduct all discussion in this regard with dignity and in a self-respecting spirit, that will show itself intent upon securing equal justice rather than unequal advantage. Comity, courtesy, and justice cannot, I am sure, fail to be the ruling motives and objects of discussion.

I shall be most happy to come to a distinct and friendly understanding with you, as the representative of Her Britannic Majesty's Government, which will result in such a definition of the rights of Ameri-



can fishing-vessels under the treaty of 1818 as shall effectually prevent any encroachment by them upon the territorial waters of the British Provinces for the purpose of fishing within those waters, or trespassing in any way upon the littoral or marine rights of the inhabitants, and, at the same time, prevent that convention from being improperly expanded into an instrument of discord by affecting interests and accomplishing results wholly outside of and contrary to its object and intent, by allowing it to become an agency to interfere with and perhaps destroy those reciprocal commercial privileges and facilities between neighboring communities which contribute so importantly to their peace and happiness. It is obviously essential that the administration of the laws regulating the Canadian inshore fishing should not be conducted in a punitive and hostile spirit, which can only tend to induce acts of a retaliatory nature.

Everything will be done by the United States to cause their citizens engaged in fishing to conform to the obligations of the treaty, and prevent an infraction of the fishing laws of the British Provinces; but it is equally necessary that ordinary commercial intercourse should not be interrupted by harsh measures and unfriendly administration.

I have the honor, therefore, to invite a frank expression of your views upon the subject, believing that, should any differences of opinion or disagreement as to facts exist, they will be found to be so minimized that an accord can be established for the full protection of the inshore fishing of the British Provinces, without obstructing the open-sea fishing operations of the citizens of the United States or disturbing the trade regulations now subsisting between the countries.

I have, &c.,

T. F. BAYARD.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, May 10, 1886.

(Received May 12.)

SIR: I have the honor to acknowledge the receipt of your note of this day's date, and to inform you that I have lost no time in transmitting a copy of this important communication to Her Majesty's Government.

I have, &c.,

L. S. SACKVILLE WEST.

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*Mr. Bayard to Mr. Phelps.*

No. 289.]

DEPARTMENT OF STATE,

Washington, May 11, 1886.

SIR: With reference to your telegram of the 9th instant, in regard to the fisheries question, I transmit to you herewith a copy of a note which I addressed to Sir Lionel West yesterday on the subject.

I am, &c.,

T. F. BAYARD.

*Mr. Bayard to Sir I. West.*

DEPARTMENT OF STATE,  
*Washington, May 20, 1886.*

SIR: Although without reply to the note I had the honor to address to you on the 10th instant, in relation to the Canadian fisheries and the interpretation of the treaty of 1818 between the United States and Great Britain as to the rights and duties of the American citizens engaged in maritime trade and intercourse with the Provinces of British North America, in view of the unrestrained, and, as it appears to me, unwarranted, irregular, and severe action of Canadian officials toward American vessels in those waters, yet I feel it to be my duty to bring impressively to your attention information more recently received by me from the United States consul-general at Halifax, Nova Scotia, in relation to the seizure and continued detention of the American schooner *David J. Adams*, already referred to in my previous note, and the apparent disposition of the local officials to use the most extreme and technical reasons for interference with vessels not engaged in or intended for inshore fishing on that coast.

The report received by me yesterday evening alleges such action in relation to the vessel mentioned as renders it difficult to imagine it to be that orderly proceeding and "due process of law" so well known and customarily exercised in Great Britain and the United States, and which dignifies the two Governments, and gives to private rights of property and the liberty of the individual their essential safeguards.

By the information thus derived it would appear that after four several and distinct visitations by boats' crews from the *Lansdowne*, in Annapolis Basin, Nova Scotia, the *David J. Adams* was summarily taken into custody by the Canadian steamer *Lansdowne* and carried out of the Province of Nova Scotia, across the Bay of Fundy, and into the port of St. John, New Brunswick, and without explanation or hearing, on the following Monday, May 10, taken back again by an armed crew to Digby, in Nova Scotia. That in Digby the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such manner as to prevent its contents being read, and the request of the captain of the *David J. Adams* and of the United States consul-general to be allowed to detach the writ from the mast for the purpose of learning its contents was positively refused by the provincial official in charge. Nor was the United States consul-general able to learn from the commander of the *Lansdowne* the nature of the complaint against the vessel, and his respectful application to that effect was fruitless.

In so extraordinary, confused, and irresponsible a condition of affairs, it is not possible to ascertain with that accuracy which is needful in matters of such grave importance the precise grounds for this harsh and peremptory arrest and detention of a vessel the property of citizens of a nation with whom relations of peace and amity were supposed to exist.

From the best information, however, which the United States consul-general was enabled to obtain after application to the prosecuting officials, he reports that the *David J. Adams* was seized and is now held (1) for alleged violation of the treaty of 1818; (2) for alleged



violation of the act 59 Geo. III; (3) for alleged violation of the colonial act of Nova Scotia of 1868; and (4) for alleged violation of the act of 1870 and also that of 1883, both Canadian statutes.

Of these allegations there is but one which at present I press upon your immediate consideration, and that is the alleged infraction of the treaty of 1818.

I beg to recall to your attention the correspondence and action of those respectively charged with the administration and government of Great Britain and the United States in the year 1870, when the same international questions were under consideration and the status of law was not essentially different from what it is at present.

This correspondence discloses the intention of the Canadian authorities of that day to prevent encroachment upon their inshore fishing grounds, and their preparations in the way of a marine police force, very much as we now witness. The statutes of Great Britain and of her Canadian Provinces, which are now supposed to be invoked as authority for the action against the schooner *David J. Adams*, were then reported as the basis of their proceedings.

In his note of May 26, 1870, Mr. (afterwards Sir Edward) Thornton, the British minister at this capital, conveyed to Mr. Fish, then Secretary of State, copies of the orders of the royal Admiralty to Vice-Admiral Wellesley, in command of the naval forces "employed in maintaining order at the fisheries in the neighborhood of the coasts of Canada."

All of these orders directed the protection of Canadian fishermen and cordial co-operation and concert with the United States force sent on the same service with respect to American fishermen in those waters. Great caution in the arrest of American vessels charged with violation of the Canadian fishing laws was scrupulously enjoined upon the British authorities, and the extreme importance of the commanding officers of ships selected to protect the fisheries exercising the utmost discretion in paying especial attention to Lord Granville's observation, that no vessel should be seized unless it were evident, and could be clearly proved, that the offense of fishing had been committed, and the vessel captured within three miles of land.

This caution was still more explicitly announced when Mr. Thornton, on the 11th of June, 1870, wrote to Mr. Fish:

"You are, however, quite right in not doubting that Admiral Wellesley, on the receipt of the later instructions addressed to him on the 5th ultimo, will have modified the directions to the officers under his command so that they may be in conformity with the views of the Admiralty. In confirmation of this I have since received a letter from Vice-Admiral Wellesley dated the 30th ultimo, informing me that he had received instructions to the effect that officers of Her Majesty's ships employed in the protection of the fisheries should not seize any vessel unless it were evident, and could be clearly proved, that the offense of fishing had been committed and the vessel itself captured within three miles of land."

This understanding between the two Governments wisely and efficiently guarded against the manifest danger of intrusting the execution of powers so important and involving so high and delicate a discretion to any but wise and responsible officials, whose prudence

and care should be commensurate with the magnitude and national importance of the interests involved. And I should fail in my duty if I did not endeavor to impress you with my sense of the absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the treaty of 1818 to the conditions announced by Sir Edward Thornton to this Government in June, 1870.

The charges of violating the local laws and commercial regulations of the ports of the British Provinces (to which I am desirous that due and full observance should be paid by citizens of the United States), I do not consider in this note, and I will only take this occasion to ask you to give me full information of the official action of the Canadian authorities in this regard, and what laws and regulations having the force of law, in relation to the protection of their inshore fisheries and preventing encroachments thereon, are now held by them to be in force.

But I trust you will join with me in realizing the urgent and essential importance of restricting all arrests of American fishing vessels for supposed or alleged violations of the convention of 1818 within the limitations and conditions laid down by the authorities of Great Britain in 1870, to wit: That no vessel shall be seized unless it is evident and can be clearly proved that the offense of fishing has been committed and the vessel itself captured within three miles of land.

In regard to the necessity for the instant imposition of such restrictions upon the arrest of vessels, you will, I believe, agree with me, and I will therefore ask you to procure such steps to be taken as shall cause such orders to be forthwith put in force under the authority of Her Majesty's Government.

I have, &c.,

T. F. BAYARD.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, May 22, 1886.

MY DEAR SIR LIONEL: I have telegraphed to-day to Mr. Phelps, urging the advantage and need of my coming to some immediate understanding with you expressive of the views of the two parties to the treaty.

My conviction strengthens as to the importance of having a stop put at once to vexatious interpretations and action by local authorities, which can only hinder an amicable accord, and I have asked that these seizures be suspended without prejudice to the legal results pending an authoritative treatment of the main question.

It surely cannot be the purpose of the provincial authorities to embarrass the two Governments, by whom alone the issues are cognizable. A frank and friendly spirit has been exhibited by both Governments in abstaining from any demonstration of naval force in the provincial waters, and it is desirable that this should be continued, as it will add to the moral impressiveness of any settlement we may arrive at.

Very faithfully yours,

T. F. BAYARD.



*Mr. Bayard to Mr. Phelps.*

No. 303.]

DEPARTMENT OF STATE,  
Washington, May 22, 1886.

SIR: With reference to my instruction No. 289 of the 11th instant, transmitting to you a copy of my note of the 10th of this month to Sir Lionel West, Her Britannic Majesty's minister at this capital, concerning the fishery question, I now inclose for your information a copy of a further note on the same subject, which I addressed to Sir Lionel West yesterday, inclosing also a copy of the report of the United States consul-general at Halifax, which is referred to in my note to Sir Lionel West.

I am, &amp;c.,

T. F. BAYARD.

[Inclosure No. 1.]

Mr. Bayard to Sir Lionel West, May 20, 1886. (See *ante*, p. 768.)

[Inclosure No. 2.]

*Mr. Phelan to Mr. Porter.*

No. 82.]

UNITED STATES CONSULATE-GENERAL,  
Halifax, May 15, 1886.

SIR: As instructed by message from the honorable Secretary of State to personally report, fully and carefully, all the facts and proceedings connected with the seizure of the American schooner *David J. Adams* by armed men from the Canadian steamship *Lansdowne*, I left Halifax for St. John May 10, as soon after receiving the message as the means of travel would permit. After leaving I learned that the vessel had been taken back to Digby, where I proceeded, and found her anchored close to the *Lansdowne* in Digby Harbor. Shortly after my arrival Captain Scott, of the *Lansdowne*, formally transferred the custody of the vessel to the collector of the port of Digby to be held on a charge, as the collector informed me, of violating the customs act of 1883, the penalty being \$400. He said if this sum was paid and the vessel not claimed by the minister of fisheries he would release her. On the following morning, in order to get at the facts in connection with the seizure, I addressed a note to the collector asking him to furnish me a copy of the charges against the vessel. He replied verbally that the vessel passed out of his possession, and was again in Captain Scott's custody. I then addressed Captain Scott a communication asking him to state in writing, fully and specifically, with as little delay as possible, why he detained this vessel.

Captain Scott replied by referring me to the deputy minister of fisheries in Ottawa. The refusal of Captain Scott to give this information, which I had a right to have, even without asking for it, was not only discourteous to me, but an indignity to the nation whose vessel he seized. The next morning I heard that a process in an admiralty suit against the schooner was served on the vessel. I went on board and found that the process was served by affixing to the mast with nails what I supposed to be a warrant or summons; no part of which, except the indorsement, was visible. I requested permission

from the person in charge of the schooner to take down this process so that I might read, and, if possible, ascertain from its contents what offenses were charged against this vessel. My request was refused; and right here I may remark that it seems a strange course of procedure to serve a party with a process to appear and defend a suit, and then prohibit that party and those interested in his protection and defense in respect to that suit, from seeing or inspecting the process thus served. The frequent changes as to the custodians of this vessel, the mysterious secret, and unexplained movements of these officials, and their refusal to set forth any of the alleged offenses charged to the vessel, was most aggravating.

All the parties to the controversy were on the ground, and want of knowledge could not be urged as a reason why this information was withheld. Not until after my arrival in Halifax, on the 14th of May, did I receive the slightest intimation of the charge against the vessel, but on the contrary every effort was made to conceal it. All I could do under the circumstances was to serve Captain Scott, and the person in charge of the schooner, with protest. Captain Scott arrived in Halifax on the 12th. On the 14th he sent me a second reply, in which he stated that the vessel was seized for a violation of the imperial statutes in entering a port for other than a legal purpose.

The facts in this case, as I obtained them from Captain Kinney, are as follows:

The *David J. Adams* entered Digby Bay on Wednesday evening, May 5, 1886. Her captain purchased from a fisherman named Ellis, residing at the entrance of Digby Bay, nearly five barrels of bait. On Thursday he purchased from several fishermen, whose names he did not know, nearly seven barrels of bait. He then brought his vessel to anchor. It appears that this man Ellis had promised to sell this bait to a Canadian captain named Sproule for 75 cents per barrel, but getting \$1.25 from the captain of the *David J. Adams*, sold it to him. The Canadian captain reported the sale to the collector, who telegraphed for the *Lansdowne*, which arrived during the night. On Friday morning the *David J. Adams* in sailing out of the basin was hailed by a boat from the *Lansdowne* and came alongside, the commander of which asked the name of the vessel and that of her owner, where she was from, and her business in the basin. Being answered by the captain in his own way, the boat returned to the *Lansdowne* without ordering the vessel to sea. The schooner continued her course, but ran aground, and while in this position she was boarded a second time. The officer in charge stated that he had orders from Captain Scott to search the vessel, and immediately proceeded to carry out the order, and found some herring. The captain was asked how old they were. He replied about ten days. The boat again returned to the *Lansdowne* and brought to the schooner a new officer, who examined the vessel and returned to the *Lansdowne*. The fourth visit to the vessel brought Captain Scott, who, in the name of the Queen, seized her. On Saturday morning the vessel was taken to St. John, N. B., and on Sunday she was returned to Digby, the place of capture.

A suit has been begun in the supreme court of Nova Scotia at Halifax in the name of the Queen against Alden Kinney, master, in which the following claim is made, namely, for £200 sterling, equal



to \$973.33, for violation of a certain convention between his late Majesty, George the Third, King of Great Britain and Ireland, of the one part, and the United States of America of the other part, made on the 20th day of October, A. D. 1818, and for violation of the act of Parliament of Great Britain and Ireland, made and passed in the fifty-ninth year of the reign of his late Majesty, George the Third, King of the United Kingdom of Great Britain and Ireland, being chapter 38 of the acts of the said last Parliament, and passed in said year. In addition to the above, an action has been instituted in the vice-admiralty court at Halifax to have the vessel and cargo forfeited. The charges are (1) that she violated the treaty of 1818; (2) that she violated the provisions of the act 59, George the Third; (3) that she violated the provisions of chapter 61 of the Canadian acts of 1870, and chapter 23 of the acts of Canada, 1871. Also a suit was instituted later for violating the customs act of Canada for 1883. Under this act it is charged that the vessel did not report her arrival at Digby to the customs officer. Digby is a fishing village without a corporation, and, so far as I could learn, and I made special inquiry, the harbor is not defined, and the practice has been that only vessels having business at Digby entered at the custom-house. The records of the office will show, and the collector admitted, that during his forty years' service fishermen went in and out the bay at pleasure and were never required to report. It is very plain that this suit was not instituted to vindicate the law, as the vessel was not apprehended on that charge, but instituted to annoy and harass our fishermen. The other suits are for violating the treaty of 1818, and statutes made under it. I confidently report that the only charge against the vessel that can be sustained, or that she is guilty of, is purchasing fish in British waters.

My conclusions are therefore as follows:

(1) That the *David J. Adams* was not fishing, had not fished, and was not preparing to fish in British waters.

(2) She did not conceal her name nor attempt to conceal her name.

(3) She did not report to the custom-house at Digby, because she did not enter the harbor of Digby, but only Digby Basin.

(4) She purchased twelve barrels of fish for bait in British waters for deep-sea fishing, and not to fish in such waters.

I am, sir, your obedient servant,

M. H. PHELAN,  
*Consul-General.*

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*Mr. Bayard to Mr. Phelps. (Communicated to the Earl of Rosebery by Mr. Phelps, May 29.)*

[Telegraphic.]

MAY 27, 1886.

You will say to Lord Rosebery that every disposition exists on our part to arrive at an amicable and just solution of Canadian fishery and trade question, as the President has already manifested. Main point now is to have Treaty of 1818 so interpreted as not to destroy commercial intercourse, including purchase of bait for use in deep-sea fishing. This was done by Great Britain in 1871, and its aban-

donment now would be inadmissible and adhered to now would relieve hardship and exasperation caused by summary arrest of vessels. Present action of Canadian authorities is calculated to obstruct settlement.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
*Washington, May 29, 1886.*

SIR: I have just received an official imprint of House of Commons bill No. 136, now pending in the Canadian Parliament, entitled "An act further to amend the act respecting fishing by foreign vessels," and am informed that it has passed the house and is now pending in the senate.

This bill proposes the forcible search, seizure, and forfeiture of any foreign vessel within any harbor in Canada, or hovering within three marine miles of any of the coasts, bays, creeks, or harbors in Canada, where such vessel has entered such waters for any purpose not permitted by the laws of nations, or by treaty or convention, or by any law of the United Kingdom or of Canada now in force.

I hasten to draw your attention to the wholly unwarranted proposition of the Canadian authorities, through their local agents, arbitrarily to enforce according to their own construction the provisions of any convention between the United States and Great Britain, and, by the interpolation of language not found in any such treaty, and, by interpretation not claimed or conceded by either party to such treaty, to invade and destroy the commercial rights and privileges of citizens of the United States under and by virtue of treaty stipulation with Great Britain and statutes in that behalf made and provided.

I have also been furnished with a copy of circular No. 371, purporting to be from the customs department at Ottawa, dated May 7, 1886, and to be signed by J. Johnson, commissioner of customs, assuming to execute the provisions of the treaty between the United States and Great Britain, concluded October 20, 1818, and printed copies of a warning, purporting to be issued by George E. Foster, minister of marine and fisheries, dated at Ottawa, March 5, 1886, of a similar tenor, although capable of unequal results in its execution.

Such proceedings I conceive to be flagrantly violative of the reciprocal commercial privileges to which citizens of the United States are lawfully entitled under statutes of Great Britain and the well-defined and publicly proclaimed authority of both countries, besides being in respect of the existing conventions between the two countries an assumption of jurisdiction entirely unwarranted and which is wholly denied by the United States.

In the interest of the maintenance of peaceful and friendly relations, I give you my earliest information on this subject, adding that I have telegraphed Mr. Phelps, our minister at London, to make earnest protest to Her Majesty's Government against such arbitrary, unlawful, unwarranted and unfriendly action on the part of the Canadian Government and its officials, and have instructed Mr. Phelps to give notice that the Government of Great Britain will be



held liable for all losses and injuries to citizens of the United States and their property caused by the unauthorized and unfriendly action of the Canadian officials to which I have referred.

I have, &c.,

T. F. BAYARD.

*Mr. Bayard to Mr. Phelps.*

[Telegraphic.]

WASHINGTON, May 30, 1886.

Call attention of Lord Rosebery immediately to Bill now pending in the Parliament of Canada, assuming to execute Treaty of 1818; also Circular by Johnson, Commissioner of Customs ordering seizure of vessels for violation of Treaty. Both are arbitrary and unwarranted assumptions of power against which you are instructed earnestly to protest, and state that the United States will hold Government of Great Britain responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within territorial waters of British North America.

*Mr. Phelps to the Earl of Rosebery.*

LEGATION OF THE UNITED STATES,  
London, June 1, 1886. (Received June 1.)

My LORD, I have the honour to enclose for your perusal, a copy of the translation of a cypher telegram which I have just received from the Secretary of State of the United States, and respectfully to ask your early attention to the subject it refers to.

I shall have the honor to submit to your Lordship in writing, in behalf of my Government, within two or three days, some observations on the questions involved.

I have, &c.,

E. J. PHELPS.

The EARL OF ROSEBERY.

*Mr. Bayard to Mr. Phelps.*

No. 310.]

DEPARTMENT OF STATE,  
Washington, June 1, 1886.

SIR: With reference to my instructions No. 289, of the 11th ultimo, and No. 303, of the same month, transmitting to you for your information copies of my recent notes to Sir Lionel West concerning the fisheries question, I now inclose herewith for your further information two copies of a note which I addressed on the 29th ultimo to Her Britannic Majesty's minister at this capital in relation to

house of commons bill No. 136, now pending in the Dominion Parliament, entitled "An act further to amend the act respecting fishing by foreign vessels."

I am, &c.,

T. F. BAYARD.

*Sir L. West to Mr. Bayard.*

WASHINGTON, June 2, 1886.

(Received June 3.)

SIR: I have the honor to acknowledge the receipt of your notes of the 20th and 29th of May on the subject of the seizure of American fishing vessels in Canadian waters.

I have, &c.

L. S. SACHVILLE WEST.

*Mr. Phelps to Lord Rosebery.*

LEGATION OF THE UNITED STATES,

London, June 2, 1886.

MY LORD: Since the conversation I had the honor to hold with your lordship, on the morning of the 29th ultimo, I have received from my Government a copy of the report of the consul-general of the United States at Halifax, giving full details and depositions relative to the seizure of the *David J. Adams*, and the correspondence between the consul-general and the colonial authorities in reference thereto.

The report of the consul-general and the evidence annexed to it appear fully to sustain the point submitted to your lordship in the interview above referred to, touching the seizure of this vessel by the Canadian officials.

I do not understand it to be claimed by the Canadian authorities that the vessel seized had been engaged or was intending to engage in fishing within any limit prohibited by the treaty of 1818.

The occupation of the vessel was exclusively deep-sea fishing, a business in which it had a perfect right to be employed. The ground upon which the capture was made was that the master of the vessel had purchased of an inhabitant of Nova Scotia, near the port of Digby, in that province, a day or two before, a small quantity of bait to be used in fishing in the deep sea, outside the three-mile limit.

The question presented is whether, under the terms of the treaty and the construction placed upon them in practice for many years by the British Government, and in view of the existing relations between the United States and Great Britain, that transaction affords a sufficient reason for making such a seizure and for proceeding under it to the confiscation of the vessel and its contents.

I am not unaware that the Canadian authorities, conscious, apparently, that the affirmative of this proposition could not be maintained, deemed it advisable to supplement it with a charge against the vessel of a violation of the Canadian customs act of 1883, in not reporting her arrival at Digby to the customs officer. But this charge is not the one on which the vessel was seized, or which must now be principally relied on for its condemnation, and standing alone could hardly,



even if well founded, be the source of any serious controversy. It would be at most, under the circumstances, only an accidental and purely technical breach of a custom-house regulation, by which no harm was intended, and from which no harm came, and would in ordinary cases be easily condoned by an apology, and perhaps the payment of costs.

But trivial as it is, this charge does not appear to be well founded in point of fact. Digby is a small fishing settlement and its harbor not defined. The vessel had moved about and anchored in the outer part of the harbor, having no business at, or communication with Digby, and no reason for reporting to the officer of customs. It appears by the report of the consul-general to be conceded by the customs authorities there that fishing vessels have for forty years been accustomed to go in and out of the bay at pleasure, and have never been required to send ashore and report when they had no business with the port, and made no landing; and that no seizure had ever before been made or claimed against them for so doing.

Can it be reasonably insisted under these circumstances that by the sudden adoption, without notice, of a new rule, a vessel of a friendly nation should be seized and forfeited for doing what all similar vessels had for so long a period been allowed to do without question?

It is sufficiently evident that the claim of a violation of the customs act was an afterthought, brought forward to give whatever added strength it might to the principal claim on which the seizure had been made.

Recurring, then, to the only real question in the case, whether the vessel is to be forfeited for purchasing bait of an inhabitant of Nova Scotia, to be used in lawful fishing, it may be readily admitted that if the language of the treaty of 1818 is to be interpreted literally, rather than according to its spirit and plain intent, a vessel engaged in fishing would be prohibited from entering a Canadian port "for any purpose whatever" except to obtain wood or water, to repair damages, or to seek shelter. Whether it would be liable to the extreme penalty of confiscation for a breach of this prohibition in a trifling and harmless instance might be quite another question.

Such a literal construction is best refuted by considering its preposterous consequences. If a vessel enters a port to post a letter, or send a telegram, or buy a newspaper, to obtain a physician in case of illness, or a surgeon in case of accident, to land or bring off a passenger, or even to lend assistance to the inhabitants in fire, flood, or pestilence, it would, upon this construction, be held to violate the treaty stipulations maintained between two enlightened maritime and most friendly nations, whose ports are freely open to each other in all other places and under all other circumstances. If a vessel is not engaged in fishing she may enter all ports; but if employed in fishing, not denied to be lawful, she is excluded, though on the most innocent errand. She may buy water, but not food or medicine; wood, but not coal. She may repair rigging, but not purchase a new rope, though the inhabitants are desirous to sell it. If she even entered the port (having no other business) to report herself to the custom-house, as the vessel in question is now seized for not doing, she would be equally within the interdiction of the treaty. If it be said these are extreme instances of violation of the treaty not likely to be

insisted on, I reply that no one of them is more extreme than the one relied upon in this case.

I am persuaded that your lordship will, upon reflection, concur with me that an intention so narrow, and in its result so unreasonable and so unfair, is not to be attributed to the high contracting parties who entered into this treaty.

It seems to me clear that the treaty must be construed in accordance with those ordinary and well-settled rules applicable to all written instruments, which without such salutary assistance must constantly fail of their purpose. By these rules the letter often gives way to the intent, or rather is only used to ascertain the intent.

The whole document will be taken together, and will be considered in connection with the attendant circumstances, the situation of the parties, and the object in view, and thus the literal meaning of an isolated clause is often shown not to be the meaning really understood or intended.

Upon these principles of construction the meaning of the clause in question does not seem doubtful. It is a treaty of friendship and not of hostility. Its object was to define and protect the relative rights of the people of the two countries in these fisheries, not to establish a system of non-intercourse or the means of mutual and unnecessary annoyance. It should be judged in view of the general rules of international comity and of maritime intercourse and usage, and its restrictions considered in the light of the purposes they were designed to serve.

Thus regarded it appears to me clear that the words "for no other purpose whatever," as employed in the treaty, mean no other purposes inconsistent with the provisions of the treaty, or prejudicial to the interests of the provinces or their inhabitants, and were not intended to prevent the entry of American fishing vessels into Canadian ports for innocent and mutually beneficial purposes, or unnecessarily to restrict the free and friendly intercourse customary between all civilized maritime nations, and especially between the United States and Great Britain. Such, I cannot but believe, is the construction that would be placed upon this treaty by any enlightened court of justice.

But even were it conceded that if the treaty was a private contract, instead of an international one, a court in dealing with an action upon it might find itself hampered by the letter from giving effect to the intent, that would not be decisive of the present case.

The interpretation of treaties between nations in their intercourse with each other proceeds upon broader and higher considerations. The question is not what is the technical effect of words, but what is the construction most consonant to the dignity, the just interests, and the friendly relations of the sovereign powers. I submit to your lordship that a construction so harsh, so unfriendly, so unnecessary, and so irritating as that set up by the Canadian authorities is not such as Her Majesty's Government has been accustomed either to accord or to submit to. It would find no precedent in the history of British diplomacy, and no provocation in any action or assertion of the Government of the United States.



These views derive great, if not conclusive, force from the action of the British Parliament on the subject, adopted very soon after the treaty of 1818 took effect, and continued without change to the present time.

An act of Parliament (59 George III, chap. 38) was passed June 14, 1819, to provide for carrying into effect the provisions of the treaty. After reciting the terms of the treaty, it enacts (in substance) that it shall be lawful for His Majesty by orders in council to make such regulations and to give such directions, orders, and instructions to the governor of Newfoundland or to any officer or officers in that station, or to any other persons "as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of said convention *with relation to the taking, drying, and curing of fish by inhabitants of the United States of America*, in common with British subjects within the limits set forth in the aforesaid convention."

It further enacts that any foreign vessel engaged in fishing, or preparing to fish, within three marine miles of the coast (not authorized to do so by treaty) shall be seized or forfeited upon prosecution in the proper court.

It further provides as follows:

"That it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbors of his Britannic Majesty's dominions in America as are last mentioned for the purpose of shelter and repairing damages therein and of purchasing wood and of obtaining water, and for no other purpose whatever, subject nevertheless to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbors, or in any other manner whatever abusing the said privileges by the said treaty and this act reserved to them, and as shall for that purpose be imposed by an order or orders to be from time to time made by His Majesty in council under the authority of this act, and by any regulations which shall be issued by the governor or person exercising the office of governor in any such parts of His Majesty's dominions in America, under or in pursuance of any such an order in council as aforesaid.

It further provides as follows:

"That if any person or persons upon requisition made by the governor of Newfoundland, or the person exercising the office of governor, or by any governor or person exercising the office of governor, in any other parts of His Majesty's dominions in America as aforesaid, or by any officer or officers acting under such governor, or person exercising the office of governor, in the execution of any orders or instructions from His Majesty in council, shall refuse to depart from such bays or harbors; or if any person or persons shall refuse or neglect to conform to any regulations or directions which shall be made or given for the execution of any of the purposes of this act; every such person so refusing or otherwise offending against this act shall forfeit the sum of £200, to be recovered, &c."

It will be perceived from these extracts, and still more clearly from a perusal of the entire act, that while reciting the language of

the treaty in respect to the purposes for which American fishermen may enter British ports, it provides no forfeiture or penalty for any such entry unless accompanied either (1) by fishing or preparing to fish within the prohibited limits, or (2) by the infringement of restrictions that may be imposed by orders in council to prevent such fishing or the drying or curing of fish, or the abuse of privileges reserved by the treaty, or (3) by a refusal to depart from the bays or harbors upon proper requisition.

It thus plainly appears that it was not the intention of Parliament, nor its understanding of the treaty, that any other entry by an American fishing vessel into a British port should be regarded as an infraction of its provisions, or as affording the basis of proceedings against it.

No other act of Parliament for the carrying out of this treaty has ever been passed. It is unnecessary to point out that it is not in the power of the Canadian Parliament to enlarge or alter the provisions of the act of the Imperial Parliament, or to give to the treaty either a construction or a legal effect not warranted by that act.

But until the effort which I am informed is now in progress in the Canadian Parliament for the passage of a new act on the subject, introduced since the seizures under consideration, I do not understand that any statute has ever been enacted in that Parliament which attempts to give any different construction of effect to the treaty from that given by the act of 59 George III.

The only provincial statutes which, in the proceedings against the *David J. Adams*, that vessel has thus far been charged with infringing are the colonial acts of 1868, 1870, and 1883. It is therefore fair to presume that there are no other colonial acts applicable to the case, and I know of none.

The act of 1868, among other provisions not material to this discussion, provides for a forfeiture of foreign vessels "found fishing, or preparing to fish, or to have been fishing, in British waters within three marine miles of the coast," and also provides a penalty of \$400 against a master of a foreign vessel within the harbor who shall fail to answer questions put in an examination by the authorities. No other act is by this statute declared to be illegal; and no other penalty or forfeiture is provided for.

The very extraordinary provisions in this statute for facilitating forfeitures and embarrassing defense, or appeal from them, not material to the present case, would, on a proper occasion, deserve very serious attention.

The act of 1883 has no application to the case, except upon the point of the omission of the vessel to report to the customs officer already considered.

It results, therefore, that at the time of the seizure of the *David J. Adams* and other vessels there was no act whatever, either of the British or colonial parliaments, which made the purchase of bait by those vessels illegal, or provided for any forfeiture, penalty, or proceedings against them for such a transaction, and even if such purchase could be regarded as a violation of that clause of the treaty which is relied on, no law existed under which the seizure could be justified. It will not be contended that custom-house authorities or colonial courts can seize and condemn vessels for a breach of the stipulations of a treaty when no legislation exists which authorizes



them to take cognizance of the subject, or invests them with any jurisdiction in the premises. Of this obvious conclusion the Canadian authorities seem to be quite aware. I am informed that since the seizures they have pressed or are pressing through the Canadian parliament in much haste an act which is designed for the first time in the history of the legislation under this treaty to make the facts upon which the American vessels have been seized illegal, and to authorize proceedings against them therefor.

What the effect of such an act will be in enlarging the provisions of an existing treaty between the United States and Great Britain need not be considered here. The question under discussion depends upon the treaty and upon such legislation warranted by the treaty as existed when the seizure took place.

The practical construction given to the treaty down to the present time has been in entire accord with the conclusions thus deduced from the act of Parliament. The British Government has repeatedly refused to allow interference with American fishing vessels, unless for illegal fishing, and has given explicit orders to the contrary.

On the 26th of May, 1870, Mr. Thornton, the British minister at Washington, communicated officially to the Secretary of State of the United States copies of the orders addressed by the British Admiralty to Admiral Wellesley, commanding Her Majesty's naval forces on the North American station, and of a letter from the colonial department to the foreign office, in order that the Secretary might "see the nature of the instructions to be given to Her Majesty's and the Canadian officers employed in maintaining order at the fisheries in the neighborhood of the coasts of Canada." Among the documents thus transmitted is a letter from the foreign office to the secretary of the Admiralty, in which the following language is contained:

"The Canadian Government has recently determined, with the concurrence of Her Majesty's ministers, to increase the stringency of the existing practice of dispensing with the warnings hitherto given, and seizing at once any vessel detected in violating the law.

"In view of this change and of the questions to which it may give rise, I am directed by Lord Granville to request that you will move their lordships to instruct the officers of Her Majesty's ships employed in the protection of the fisheries that they are not to seize any vessel unless it is evident and can be clearly proved that the offense of fishing has been committed and the vessel itself captured within three miles of land."

In the letter from the lords of the Admiralty to Vice-Admiral Wellesley of May 5, 1870, in accordance with the foregoing request, and transmitting the letter above quoted from, there occurs the following language:

"My lords desire me to remind you of the extreme importance of commanding officers of the ships selected to protect the fisheries exercising the utmost discretion in carrying out their instructions, paying special attention to Lord Granville's observation *that no vessel should be seized unless it is evident and can be clearly proved that the offense of fishing has been committed, and that the vessel is captured within three miles of land.*"

Lord Granville, in transmitting to Sir John Young the aforesaid instructions, makes use of the following language:

"Her Majesty's Government do not doubt that your ministers will agree with them as to the propriety of these instructions, and will give corresponding instructions to the vessels employed by them."

These instructions were again officially stated by the British minister at Washington to the Secretary of State of the United States in a letter dated June 11, 1870.

Again, in February, 1871, Lord Kimberly, colonial secretary, wrote to the governor-general of Canada as follows:

"The exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter, and of repairing damages therein, purchasing wood, and of obtaining water, might be warranted by the letter of the treaty of 1818, and by the terms of the imperial act 59 George III, chap. 38, but Her Majesty's Government feel bound to state that it seems to them an extreme measure, inconsistent with the general policy of the Empire, and they are disposed to concede this point to the United States Government under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

And in a subsequent letter from the same source to the governor-general, the following language is used:

"I think it right, however, to add that the responsibility of determining what is the true construction of a treaty made by Her Majesty with any foreign power must remain with Her Majesty's Government, and that the degree to which this country would make itself a party to the strict enforcement of the treaty rights may depend not only on the literal construction of the treaty, but on the moderation and reasonableness with which these rights are asserted."

I am not aware that any modification of these instructions or any different rule from that therein contained has ever been adopted or sanctioned by Her Majesty's Government.

Judicial authority upon this question is to the same effect. That the purchase of bait by American fishermen in the provincial ports has been a common practice is well known. But in no case, so far as I can ascertain, has a seizure of an American vessel ever been enforced on the ground of the purchase of bait, or of any other supplies. On the hearing before the Halifax Fisheries Commission in 1877 this question was discussed, and no case could be produced of any such condemnation. Vessels shown to have been condemned were in all cases adjudged guilty, either of fishing, or preparing to fish, within the prohibited limit. And in the case of the *White Fawn*, tried in the admiralty court of New Brunswick before Judge Hazen in 1870, I understand it to have been distinctly held that the purchase of bait, unless proved to have been in preparation for illegal fishing, was not a violation of the treaty, nor of any existing law, and afforded no ground for proceedings against the vessel.

But even were it possible to justify on the part of the Canadian authorities the adoption of a construction of the treaty entirely different from that which has always heretofore prevailed, and to declare those acts criminal which have hitherto been regarded as innocent, upon obvious grounds of reason and justice, and upon common principles of comity to the United States Government, previous notice should have been given to it or to the American fishermen of the new and stringent instructions it was intended to enforce.



If it was the intention of Her Majesty's Government to recall the instructions which I have shown had been previously and so explicitly given relative to the interference with American vessels, surely notice should have been given accordingly.

The United States have just reason to complain, even if these restrictions could be justified by the treaty or by the acts of Parliament passed to carry it into effect, that they should be enforced in so harsh and unfriendly a manner without notice to the Government of the change of policy, or to the fishermen of the new danger to which they were thus exposed.

In any view, therefore, which it seems to me can be taken of this question, I feel justified in pronouncing the action of the Canadian authorities in seizing and still retaining the *David J. Adams* to be not only unfriendly and discourteous, but altogether unwarrantable.

The seizure was much aggravated by the manner in which it was carried into effect. It appears that four several visitations and searches of the vessel were made by boats from the Canadian steamer *Lansdowne*, in Annapolis Basin, Nova Scotia. The *Adams* was finally taken into custody and carried out of the Province of Nova Scotia, across the Bay of Fundy, and into the port of St. John, New Brunswick, and without explanation or hearing, on the following Monday, May 10, taken back by an armed crew to Digby, Nova Scotia. That, in Digby, the paper alleged to be the legal precept for the capture and detention of the vessel was nailed to her mast in such manner as to prevent its contents being read, and the request of the captain of the *David J. Adams* and of the United States consul-general to be allowed to detach the writ from the mast for the purpose of learning its contents was positively refused by the provincial official in charge. Nor was the United States consul-general able to learn from the commander of the *Lansdowne* the nature of the complaint against the vessel, and his respectful application to that effect was fruitless.

From all the circumstances attending this case, and other recent cases like it, it seems to me very apparent that the seizure was not made for the purpose of enforcing any right or redressing any wrong. As I have before remarked, it is not pretended that the vessel had been engaged in fishing, or was intending to fish in the prohibited waters, or that it had done or was intending to do any other injurious act. It was proceeding upon its regular and lawful business of fishing in the deep sea. It had received no request, and of course could have disregarded no request, to depart, and was, in fact, departing when seized; nor had its master refused to answer any questions put by the authorities. It had violated no existing law, and had incurred no penalty that any known statute imposed.

It seems to me impossible to escape the conclusion that this and other similar seizures were made by the Canadian authorities for the deliberate purpose of harassing and embarrassing the American fishing vessels in the pursuit of their lawful employment. And the injury, which would have been a serious one, if committed under a mistake, is very much aggravated by the motives which appear to have prompted it.

I am instructed by my Government earnestly to protest against these proceedings as wholly unwarranted by the treaty of 1818, and altogether inconsistent with the friendly relations hitherto existing

between the United States and Her Majesty's Government; to request that the *David J. Adams*, and the other American fishing vessels now under seizure in Canadian ports, be immediately released, and that proper orders may be issued to prevent similar proceedings in the future. And I am also instructed to inform you that the United States will hold Her Majesty's Government responsible for all losses which may be sustained by American citizens in the dispossession of their property growing out of the search, seizure, detention, or sale of their vessels lawfully within the territorial waters of British North America.

The real source of the difficulty that has arisen is well understood. It is to be found in the irritation that has taken place among a portion of the Canadian people on account of the termination by the United States Government of the treaty of Washington on the 1st of July last, whereby fish imported from Canada into the United States, and which so long as that treaty remained in force was admitted free, is now liable to the import duty provided by the general revenue laws, and the opinion appears to have gained ground in Canada that the United States may be driven, by harassing and annoying their fishermen, into the adoption of a new treaty by which Canadian fish shall be admitted free.

It is not necessary to say that this scheme is likely to prove as mistaken in policy as it is indefensible in principle. In terminating the treaty of Washington the United States were simply exercising a right expressly reserved to both parties by the treaty itself, and of the exercise of which by either party neither can complain. They will not be coerced by wanton injury into the making of a new one. Nor would a negotiation that had its origin in mutual irritation be promising of success. The question now is, not what fresh treaty may or might be desirable, but what is the true and just construction, as between the two nations, of the treaty that already exists.

The Government of the United States, approaching this question in the most friendly spirit, cannot doubt that it will be met by Her Majesty's Government in the same spirit, and feels every confidence that the action of Her Majesty's Government in the premises will be such as to maintain the cordial relations between the two countries that have so long happily prevailed.

I have the honor to be, &c.,

E. J. PHELPS.

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*Earl Granville to Lord Lansdowne.*

[Telegram.]

*3rd June, 1886.*

The following telegram has been handed to Lord Rosebery by the United States Minister. The telegram commences as follows:

"Direct Lord Rosebery's attention immediately to the Bill No. 136 now pending in the Canadian Parliament. This bill assumes power to execute the Convention of 1818. You will also call his attention to the circular No. 371, issued by the Commissioner of Customs for the Dominion, Mr. Johnson, which orders the seizure of vessels on violation of that Convention. Both of these are unwarranted and



arbitrary assumptions of power against which you are desired to make an early protest. You are instructed in doing so, to state that the Government of Great Britain will be held responsible by that of the United States for whatever losses may be incurred by American citizens growing out of the dispossession of their property, detention or sale of their vessels lawfully within British North American territorial waters."

The telegram ends here. Please telegraph the purport of circular No. 371 referred to.

(Sd.)

GRANVILLE.

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*Earl Granville to Lord Lansdowne.*

[Telegram.]

4th June, 1886.

The terms of the concluding paragraph of the warning which was enclosed in your despatch dated 25th March, exclude all foreign vessels as well as those of the United States from Canadian bays. This is unintentional in all probability, as there is in the Act recited nothing to justify this. It would be well, however, to invite the attention of your Government to this point with a view to having the warning amended.

(Sd.)

GRANVILLE.

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*Lord Lansdowne to Earl Granville.*

[Extract.]

QUEBEC, 8th June, 1886.

MY LORD: In reference to your Lordship's telegrams of the 3rd and 4th inst., in which you have called the attention of my Government to the Customs Circular No. 371 and to the "Warning" enclosed therein, I think it desirable to make the following observations in explanation of the telegraphic replies which I have addressed to Your Lordship.

In your telegram of the 4th inst., Your Lordship pointed out that the terms of the concluding paragraph of the "Warning" in question had the effect of excluding not only vessels belonging to the United States but all foreign vessels from Canadian bays and harbours, and you observed that this was probably not intentional as nothing in the Act recited would justify such an exclusion.

I have ascertained that the "Warning" as originally issued from the Department of Fisheries after reciting the first Article of the Convention of 1818, and Sections 2, 3 and 4 of the Canadian Act of 1868, respecting fishing by foreign vessels, contained the following paragraph:

"Therefore be it known, that by virtue of the Treaty Provisions and Act of Parliament above recited, all foreign vessels or boats are forbidden from fishing or taking fish by any means whatever within three marine miles of any of the coasts, bays, creeks, and harbours in Canada, or to enter such bays, harbours and creeks except for the

purpose of shelter and of repairing damages therein, of purchasing wood and obtaining water, and for no other purposes whatever; of all of which you will take notice and govern yourself accordingly."

The passage quoted would, as Your Lordship has pointed out, have affected all foreign vessels, whether belonging to the United States or not. The mistake was however, detected and the "Warning" issued in a revised form from which the paragraph which I have quoted was omitted and replaced by the words "of all of which you will take notice and govern yourself accordingly."

I enclose herewith copies of the warning in its original and in its amended form. It is possible that Your Lordship or the American Minister may have seen the warning before it had been amended in the manner which I have described. The amended form which merely recites Art. I of the Convention of 1818 and the Canadian Statute of 1868, appears to me to be entirely free from objection. The latter of these Statutes is, as Your Lordship is aware, substantially the same as the Imperial Act of 1819 (59 Geo. III., cap. 58) although the provisions relating to hovering are taken from another Imperial Statute (9 Geo. III., cap. 35). The law of the United States as to hovering is, I believe, the same as that embodied in this Statute.

The concluding paragraphs of the circular No. 371 to which, and not to the warning, Your Lordship's telegram of the 4th of June may have been intended to refer, are also, I think, open to objection. After reciting the Dominion Act of 1868, which, like the Imperial Statute of 1819, applies to foreign vessels generally, the circular proceeds to mention specially certain acts as violations, not of either of the Statutes in question, but of the Convention of 1818, and declares that if "such vessels or boats," that is, any foreign fishing vessels or boats, are found committing those acts they are to be detained. As, however, the Convention has reference to the fishing rights of the United States and not to those of other foreign powers, the passages which I have quoted are, I think, certainly open to the criticism not only that they assume that the acts described are violations of the Convention, but that they seek to apply whatever penalties may be enforced against parties contravening the Convention to vessels to which those provisions are not properly applicable.

This point has been considered by my Government with every desire to revise the circular in such a manner as to remove all reasonable objections to it upon these or other grounds, and I have much pleasure in informing Your Lordship that the circular will be re-issued with the following concluding paragraphs in lieu of those referred to above:

"Having reference to the above you are requested to furnish any foreign fishing vessels, boats or fishermen found within three marine miles of the shore within your district with a printed copy of the warning enclosed herewith.

"If any fishing vessel or boat of the United States is found fishing or to have been fishing or preparing to fish, or if hovering within the three mile limit, does not depart within twenty-four hours after receiving such warning, you will place an officer on board of such vessel and at once telegraph the facts to the Fisheries Department at Ottawa and await instructions."

The effect of these words will be that every foreign fisherman found within the three mile limit will receive a warning which will



make him aware of the state of the law, while every fishing vessel belonging to the United States found contravening the existing Canadian Statutes, which, as I have already reminded your Lordship, in these respects follow closely those passed by the Imperial Parliament, will, if not departing within twenty-four hours after receiving such warning, be detained under the conditions described.

I trust that the above explanation will be satisfactory to your Lordship.

I have, etc.,

(Sd.)

LANSDOWNE.

The Right Honorable

Earl GRANVILLE, K. G.,

etc., etc., etc.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,

*Washington, June 14, 1886.*

SIR: The consul-general of the United States at Halifax communicated to me the information derived by him from the collector of customs at that port to the effect that American fishing vessels will not be permitted to land fish at that port of entry for transportation in bond across the province.

I have also to inform you that the masters of the four American fishing vessels of Gloucester, Mass., *Martha A. Bradley*, *Rattler*, *Eliza Boynton*, and *Pioneer*, have severally reported to the consul-general at Halifax that the subcollector of customs at Canso had warned them to keep outside an imaginary line drawn from a point three miles outside Canso Head to a point three miles outside St. Esprit, on the Cape Breton coast, a distance of 40 miles. This line for nearly its entire continuance is distant 12 to 25 miles from the coast.

The same masters also report that they were warned against going inside an imaginary line drawn from a point three miles outside North Cape, on Prince Edward Island, to a point three miles outside of East Point, on the same island, a distance of over 100 miles, and that this last-named line was for nearly that entire distance about 30 miles from the shore.

The same authority informed the masters of the vessels referred to that they would not be permitted to enter Bay Chaleur.

Such warnings are, as you must be well aware, wholly unwarranted pretensions of extraterritorial authority and usurpations of jurisdiction by the provincial officials.

It becomes my duty, in bringing this information to your notice, to request that if any such orders for interference with the unquestionable rights of the American fishermen to pursue their business without molestation at any point not within three marine miles of the shores, and within the defined limits as to which renunciation of the liberty to fish was expressed in the treaty of 1818, may have been issued, the same may at once be revoked as violative of the rights of citizens of the United States under convention with Great Britain.

I will ask you to bring this subject to the immediate attention of

Her Britannic Majesty's Government, to the end that proper remedial orders may be forthwith issued.

It seems most unfortunate and regrettable that questions which have been long since settled between the United States and Great Britain should now be sought to be revived.

I have, &c.,

T. F. BAYARD.

*Sir L. West to Mr. Bayard.*

WASHINGTON, June 15, 1886.

(Received June 16.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, bringing to my notice certain alleged warnings given by the Canadian authorities to American fishing vessels, and to inform you that I have brought the matter to the notice of Her Majesty's Government.

I have, &c.

L. S. SACKVILLE WEST.

*Mr. Bayard to Mr. Phelps.*

No. 328.]

DEPARTMENT OF STATE,

Washington, June 18, 1886.

SIR: I have received and read with much satisfaction your No. 293 of the 5th instant, inclosing a copy of a note addressed by you on that day to Lord Rosebery, in reference to the seizures of American fishing vessels in Canadian waters, and other interference with our commercial rights.

The views and arguments you adduce are fully in accord with the instructions already sent you, and are so ably advanced and enforced that I have for the present, and pending Lord Rosebery's reply, nothing further to suggest on these points.

I now transmit for your information a copy of a note addressed by me, on the 14th instant, to Sir Lionel West, on the subject of certain verbal notifications not to approach the coasts of Nova Scotia, which, as I have been informed by our consul-general at Halifax, were given to four of our fishing vessels by the subcollector of customs at Canso, and the information from the collector at Halifax that no American fishing vessels would be permitted to land fish at that port for transportation in bond across the province.

In reply to my note, Sir Lionel West informed me that the subject has been brought by him to the notice of Her Majesty's Government.

My notes of the 10th, 20th, and 29th of May last to Sir Lionel West continue without reply, and this, I suppose, is one of the serious impediments to prompt and practical exchange of views which results from the triangular attitude of the United States, the imperial Government of Great Britain, and the American dependencies of the latter power, towards all questions in which the interests of the provinces are involved.

The last note of the British minister, stating that he has brought the attention of Her Majesty's Government to the questions raised by



the action of provincial officials will, I hope, be productive of authoritative expression, and afford some solid basis for our judgment and progressive action, which has hitherto been so delayed from the somewhat anomalous relations of the Canadian authorities towards a convention to which they are not actual or responsible parties.

I am, &c.,

T. F. BAYARD.

*Lord Lansdowne to Earl Granville.*

(No. 204)

CASCAPEDIA, 18th June, 1886.

MY LORD: I have the honour to forward herewith for Your Lordship's information a copy of the amended Customs circular No. 371, issued under the authority of the Government of Canada to the Collectors of Customs throughout the Dominion.

I have, etc.

(Sd.)

LANDSDOWNE.

The Right Honorable

Earl GRANVILLE, K. G.

[Enclosure.]

*Circular No. 371.*

CUSTOMS DEPARTMENT,

*Ottawa, 7th May, 1886.*

SIR,—The Government of the United States having by notice terminated Articles 18 to 25, both inclusive, and Article 30, known as the Fishery Articles of the Washington Treaty, attention is called to the following provision of the Convention between the United States and Great Britain, signed at London, on the 20th October, 1818:

Article 1st. "Whereas differences have arisen respecting the liberty claimed by the United States, for the inhabitants thereof, to take, dry and cure fish, on certain coasts, bays, harbours and creeks, of His Britannic Majesty's Dominion, in America, it is agreed between the high Contracting Parties, that the inhabitants of the said United States shall have, forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the Southern coast of Newfoundland which extends from Cape Ray to the Rameau Island, on the western and northern coast of Newfoundland from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty, forever, to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry

or cure fish at such portion so settled, without previous agreement for such purpose, with the inhabitants, proprietors, or possessors of the ground."

"And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry or cure fish, on or within three marine miles, of any of the coasts, bays, creeks or harbours of His Britannic Majesty's dominions in America, not included within the above mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours, for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying or curing fish therein, or in any manner whatever abusing the privileges hereby reserved to them."

Attention is also called to the following provisions of the Act of the Parliament of Canada, Cap. 61, of the Acts of 1868, intituled: "An Act respecting fishing by foreign vessels."

2nd. "Any commissioned officer of Her Majesty's Navy, serving on board of any vessel of Her Majesty's Navy, cruising and being in the waters of Canada for the purpose of affording protection to her Majesty's subjects engaged in the fisheries, or any commissioned officer of Her Majesty's Navy, Fishery Officer, or Stipendiary Magistrate on board of any vessel belonging to or in the service of the Government of Canada and employed in the service of protecting the fisheries or any officer of the Customs of Canada, Sheriff, Magistrate, or other person duly commissioned for that purpose, may go on board of any ship, vessel or boat, within any harbour in Canada, or hovering (in British waters) within three marine miles of any of the coasts, bays, creek or harbours in Canada, and stay on board so long as she may remain within such place or distance."

3rd. "If such ship, vessel or boat be bound elsewhere, and shall continue within such harbour, or so hovering for twenty-four hours after the master shall have been required to depart, any one of such officers or persons as are above mentioned may bring such ship, vessel or boat into port and search her cargo, and may also examine the master upon oath touching the cargo and voyage; and if the master or person in command shall not truly answer the questions put to him in such examination, he shall forfeit four hundred dollars; and if such ship, vessel or boat be foreign, or not navigated according to the laws of the United Kingdom or of Canada, and have been found fishing, or preparing to fish, or to have been fishing (in British waters) within three marine miles of any of the coasts, bays, creeks or harbours of Canada, not included within the above mentioned limits, without a license, or after the expiration of the period named in the last license granted to such ship, vessel or boat under the first section of this Act, such ship, vessel or boat, and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited."

4th. "All goods, ships, vessels and boats, and the tackle, rigging, apparel, furniture, stores and cargo liable to forfeiture under this Act, may be seized and secured by any officers or persons mentioned in the second section of this Act; and every person opposing any



officer or person in the execution of his duty under this Act, or aiding or abetting any other person in any opposition, shall forfeit eight hundred dollars, and shall be guilty of a misdemeanor, and upon conviction be liable to imprisonment for a term not exceeding two years."

Having reference to the above, you are requested to furnish any foreign fishing vessels, boats or fishermen found within three marine miles of the shore, within your district, with a printed copy of the "warning" enclosed herewith. If any fishing vessel or boat of the United States is found fishing, or to have been fishing, or preparing to fish, or if hovering within the three mile limit, does not depart within twenty-four hours after receiving such "warning", you will please place an officer on board such vessel, and at once telegraph the facts to the Fisheries Department at Ottawa, and await instructions.

(Sd.) J. JOHNSON,  
*Commissioner of Customs.*

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*Mr. Bayard to Mr. Phelps.*

No. 329.]

DEPARTMENT OF STATE,  
*Washington, June 18, 1886.*

SIR: With reference to previous correspondence concerning the fisheries question, I transmit to you herewith a copy of a dispatch from our consul at Halifax, in relation to the recent instructions to Canadian officials concerning American fishing vessels.

I am, &c.,

T. F. BAYARD.

[Inclosure.]

*Mr. Phelan to Mr. Porter.*

No. 85.]

UNITED STATES CONSULATE-GENERAL,  
*Halifax, June 15, 1886. (Received June 18.)*

SIR: I have the honor to report that I sent with dispatch No. 83, dated May 27, 1886, a circular issued by J. Johnson, Esq., Canadian commissioner of customs, known as Circular No. 371, dated May 7, 1886, containing instructions to customs collectors concerning foreign fishing vessels. I now inclose herewith a confidential circular of the same date and number issued by the same officer, with a note saying "that the confidential circular was to be substituted for the one of the same date and number previously received."

It will be seen by comparing the circulars that the two last paragraphs in the first circular issued are stricken out and the following substituted in lieu thereof:

"Having reference to the above you are requested to furnish every foreign fishing vessel, boat, or fisherman found within three marine miles from shore with a copy of the *warning* inclosed herewith. If any fishing vessel or boat of the United States is found fishing, or to have been fishing, or preparing to fish, or, if hovering within the

three-mile limit, does not depart within twenty-four hours after receiving such warning, you will place an officer on board such vessel and at once telegraph the facts to the fisheries department at Ottawa and await instructions."

Everything about shipping crews, purchasing supplies, and trading is eliminated in the confidential circular.

I am, &c.,

M. H. PHELAN,  
*Consul-General.*

*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
*Washington, July 2, 1886.*

SIR: It is my unpleasant duty promptly to communicate to you the telegraphic report to me by the United States consul-general at Halifax, that the schooner *City Point*, of Portland, Me., arrived at the port of Shelburne, Nova Scotia, landed two men, obtained water, and is detained by the authorities until further instructions are received from Ottawa.

The case as thus reported is an infringement on the ordinary rights of international hospitality, and constitutes a violation of treaty stipulations and commercial privileges, evincing such unfriendliness to the citizens of the United States as is greatly to be deplored, and which I hold it to be the responsible duty of the Government of Great Britain promptly to correct.

I have, &c.,

T. F. BAYARD.

*Mr. Willard to Mr. Bayard.*

[Telegram.]

PORTLAND, ME., *July 3, 1886.*  
(Received July 4.)

We have received the following dispatch from Shelburne, Nova Scotia, to-day, viz:

"*Cushing* boarded last night 8 miles from custom-house. Brought here seized to-day. Charge, seeking bait and not reporting at custom-house. Have not bought anything. Wire instructions.

"C. B. JEWETT."

She left here last Tuesday with the understanding you had settled the right of our vessels to buy bait. How long are we to be tormented in this kind of style? If it is to continue long we should prefer to haul our vessels up. It seems to us about time the President issued his nonintercourse proclamation and settled this thing one way or the other.

Please instruct us what to do under the circumstances, as she is a valuable vessel.

E. G. WILLARD.



*Sir L. West to Mr. Bayard.*

WASHINGTON, *July 3, 1886.*

(Received July 6.)

SIR: I have the honor to acknowledge the receipt of your note of the 2d, reporting the detention of the American schooner *City Point*, of Portland, Me., by the authorities of Shelburne, Nova Scotia.

I have, &c.,

L. S. SACKVILLE WEST.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, *July 3, 1886.*

(Received July 6.)

SIR: With reference to your note of the 29th of May, I have the honor to inform you that I am instructed by the Earl of Rosebery to state that the matters therein referred to will receive the careful attention of Her Majesty's Government after the necessary communication with the Dominion Government.

I have, &c.,

L. S. SACKVILLE WEST.

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*Earl Granville to Lord Lansdowne.*

[Telegram.]

*6th July, 1886.*

It is asserted by the United States' Minister that American vessels have been warned by the Collector of Customs at Canso to keep three miles outside a line drawn from Canso to St. Esprit, also outside a similar line extending from North Cape to East Point in Prince Edward Island.

(Sd.)

GRANVILLE.

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*Mr. Woodbury to Mr. Bayard.*

BOSTON, *July 7, 1886.*

(Received July 10.)

SIR: I forward twelve affidavits of respectable fishermen of Gloucester laying the foundation to show that the Canadian authorities have this year, without notice, radically reversed their administration of laws toward American bait buyers and others. That thereby some of our fishermen have been entrapped and seized is well known to you. I retain a duplicate set, for use in case a suit is brought for a penalty of \$400 against an assumed master of the *D. J. Adams*, which the customs authorities allege has been incurred.

I have sent these in the expectation that, in the varying phases these Canadian assaults on our commerce assume, these facts may be useful to the Department, if not in the matter of the *D. J. Adams*.

I have, &c.,

CHAS. LEVI WOODBURY.

## [Inclosure No. 1.]

I, Frank Foster, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last fifteen years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Shelburne, Digby, Grand Manan, Bliss Island, Argyle; and further says not.

FRANK FOSTER.

[L. s.]

AARON PARSONS,  
*Notary Public.*

## [Inclosure No. 2.]

I, Zebulon Tarr, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last thirty-one years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Canso, Cape North Bay, St. Anne, Margaree; and further says not.

ZEBULON TARR.

[L. s.]

AARON PARSONS,  
*Notary Public.*

## [Inclosure No. 3.]

I, John Collins, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last thirty-seven years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Canso, Georgetown, Yarmouth, Digby, Cape Negro, Tusket Island, Scatari, Sydney, Louisburg, White Head; and further says not.

JOHN COLLINS.

[L. s.]

AARON PARSONS,  
*Notary Public.*



[Inclosure No. 4.]

I, Jesse Lewis, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in course of my calling during the last forty-five years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coasts for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Yarmouth, Cape Negro, Halifax, Shelburne, Liscomb, Country Harbor, White Head, Canso, La Have, Liverpool, Ransberry Harbor, Souris, Georgetown, Charlottetown, Manepeck; and further says not.

JESSE LEWIS.

[L. S.]

AARON PARSONS,  
*Notary Public.*

[Inclosure No. 5.]

I, George H. Martin, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last 23 years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purposes was required to report at the nearest custom-house or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Digby, Brier Island, Tusket Island, Pubnico, Barrington, John's Island, Shelburne, Liverpool, Margaret Bay, Dover, Prospect, Cat's Harbor, Isaac's Harbor, Liscomb, White Haven, Cape Canso, St. Peter's Bay, Louisburg, Judique, Sydney, St. Anne's Bay; and further says not.

GEO. H. MARTIN.

[L. S.]

AARON PARSONS,  
*Notary Public.*

[Inclosure No. 6.]

I, James T. Simpson, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last fourteen years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest

custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Digby, Campobello Island, St. Andrews, Bliss Island, Grand Manan, Beaver Island, St. Mary's Bay, Yarmouth, Cape Negro, Shelburne, Cape La Have, Sambro, White Head, Canso, St. Peter's Bay, Arichat, Louisburg, Sydney, St. Anne's Bay, Port Hood; and further says not.

AARON PARSONS.

[L. S.]

AARON PARSONS,  
*Notary Public.*

[Inclosure No. 7.]

I, Simeon McLoud, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last fourteen years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Wood Harbor, Green Cove, John's Island, Rayton's Island; and further says not.

SIMEON McLOUD.

[L. S.]

AARON PARSONS,  
*Notary Public.*

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[Inclosure No. 8.]

I, Nathaniel P. Smith, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last thirty-five years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Digby, Brier Island, St. Andrews, Campobello Island, St. John, New Brunswick, Weymouth, Yarmouth, Argyle, Pubnico, Barrington, Gaspe, Cape Negro, Shelburne, Liverpool, Dover Harbor, Lunenburg, La Have, Prospect, Sambro, Halifax, Beaver Harbor, Country Harbor, White Head, Canso, Sydney, Arichat, Louisburg, Charlottetown, Georgetown, Souris, Cascumpec, Port Daniel, Ship Harbor; and further says not.

NATHANIEL P. SMITH.

[L. S.]

AARON PARSONS,  
*Notary Public.*



[Inclosure No. 9.]

I, Thomas Jones, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last fourteen years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Digby, Brier Island, Campobello Island, St. Andrews, Beaver Harbor, Bliss Island, Head Harbor, Yarmouth, St. Mary's Bay, Grand Manan, Cape Negro, Shelburne, Liverpool, Dover, Halifax, Canso, Sydney, Jeddore Harbor, Ship Harbor, Louisburg, Georgetown, Souris, Chaleur Bay; and further says not.

THOMAS JONES.

[L. S.]

AARON PARSONS,  
*Notary Public.*

[Inclosure No. 10.]

I, Scott Geyer, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last twenty-five years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Grand Manan, Head Harbor, Campobello Island, Beaver Harbor, Digby, Bliss Island, Brier Island, Barrington, Cape Negro, Prospect, Cape Canso, Gut of Canso, White Head, Halifax, Liverpool, Shelburne, Georgetown, Souris, Charlottetown, Malpeque, Chaleur Bay; and further says not.

SCOTT GEYER.

[L. S.]

AARON PARSONS,  
*Notary Public.*

[Inclosure No. 11.]

I, Edward Cantillion, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last thirteen years have entered many places and ports of Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the

nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: Grand Manan Island, Digby, Brier Island, St. Mary's Bay, Green Cove, Yarmouth, Shelburne, Liverpool, Cole Harbor, Dover, Arichat, Canso, Bedeque, St. Anns, Sydney; and further says not.

EDWARD CANTILLION,  
*Schooner Sylvester.*

[L. S.]

AARON PARSONS,  
*Notary Public.*

[Inclosure No. 12.]

I, Jeffrey F. Gerroir, of Gloucester, Commonwealth of Massachusetts, in the United States of America, on my oath do say I am a fisherman, and in the course of my calling during the last fourteen years have entered many places and ports in Nova Scotia for the purpose of buying bait to be used by the vessel I was on in the deep-sea fishery.

I further say we were always freely allowed to purchase what bait we wanted, and before this year I never heard of or knew an instance where such vessel lying to or anchoring within the three-mile limits of the coast for such purpose was required to report at the nearest custom-house, or to make entry there, or was warned off. I have been in at the following places on that coast, viz: St. Andrews, New Brunswick; St. John, New Brunswick; Digby, Yarmouth, Barrington, Shelburne, Liverpool, La Have, Lunenburg, Halifax, Dover, Arichat, Canso, Bedeque, St. Anne, Sydney, Port Hood, Louisburg, Charlottetown, Souris, Georgetown; and further says not.

JEFFREY F. GERRIOR.

[L. S.]

AARON PARSONS,  
*Notary Public.*

*Mr. Boutelle to Mr. Bayard.*

[Telegram.]

HOUSE OF REPRESENTATIVES,  
*Washington, July 10, 1886.*

I have just received a dispatch from Eastport, Me., stating that American boats after herring for sardines at St. Andrews, New Brunswick, were driven away last night by the Dominion cruiser *Middleton*, and it is announced that no American boats will be allowed to take herring for any purpose. I earnestly invoke the immediate attention of the Department to this matter.

C. A. BOUTELLE.



*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, July 10, 1886.

SIR: On the 2d of June last I had the honor to inform you that dispatches from Eastport in Maine had been received, reporting threats by the customs officials of the Dominion to seize American boats coming into those waters to purchase herring from the Canadian weirs for the purpose of canning the same as sardines, which would be a manifest infraction of the right of purchase and sale of herring caught and sold by Canadians in their own waters—in the pursuance of legitimate trade.

To this note I have not had the honor of a reply.

To-day Mr. C. A. Boutelle, M. C. from Maine, informs me that American boats visiting St. Andrews, New Brunswick, for the purpose of there purchasing herring from the Canadian weirs, for canning, had been driven away by the Dominion cruiser *Middleton*.

Such inhibition of usual and legitimate commercial contracts and intercourse is assuredly without warrant of law, and I draw your attention to it in order that the commercial rights of citizens of the United States may not be thus invaded and subjected to unfriendly discrimination.

I have, &c.,

T. F. BAYARD.

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*Mr. Boutelle to Mr. Bayard.*

HOUSE OF REPRESENTATIVES,  
Washington, July 14, 1886. (Received July 5.)

SIR: Acknowledging receipt of your letter of 13th instant, stating that the view presented by me will receive due consideration, I beg to inclose herewith the affidavit of Stephen R. Balkam, of Eastport, setting forth the facts of the refusal of the commander of the cruiser *Middleton* to permit him to purchase herring at St. Andrews, New Brunswick, on Friday, July 9, 1886, as referred to in the telegram forwarded by me to the Department on the 10th instant.

I am, &c.,

C. A. BOUTELLE.

[Inclosure.]

I, Stephen R. Balkam, of Eastport, in the county of Washington, State of Maine, on oath declare that on Friday morning, July 9, 1886, I was at St. Andrews, N. B. My business was to procure herring for canning. I am employed by Hiram Blanchard & Son. The Dominion cruiser *Middleton* was at anchor near the beacon at St. Andrews. A boat from the *Middleton*, commanded by Capt. William Kent, came alongside of my boat and asked if my boat was American, and where my boat was owned. I replied that the boat was owned at Eastport, Me. He then said I could not take any herring, and if I took any would be liable to be seized. He told me if I wished to get herring I must get an English boat; that I could not get herring with an American boat. It had been my practice to buy the herring of men who caught them in seines, they delivering the herring in the

gunwale of my boat. On the day the *Middleton* drove me away I was paying \$10 per hogshead for the herring. The men of whom I bought them were Dominion fishermen. The captain of the *Middleton* then left me and went to other American boats and ordered them away. They left without having procured any fish. I took an English boat in tow that had taken fish from the seine, towed her into American waters, then took her fish, and came to Eastport.

STEPHEN R. BALKAM.

Sworn and subscribed before me this 12th day of July, 1886.

N. B. NUTT,  
*Justice of the Peace.*

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*Lord Lansdowne to Earl Granville.*

[Telegram.]

12th July, 1886.

With respect to Your Lordship's telegram of the 6th instant, I have ascertained that no warning was issued by the Collector of Customs at Canso other than the official warning which has been seen by you. In conversation with the master of a fishing vessel the Collector expressed his opinion that the headland line ran from Cranberry Island to St. Esprit, but this was not authorized by my Government in any manner.

(Sd.) LANSDOWNE.

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*Amendment to circular No. 371.*

CUSTOMS DEPARTMENT, OTTAWA,  
July 12, 1886.

SIR: In order to avoid any misinterpretation of the concluding paragraph of my circular No. 371, dated 7th May last, you will substitute the following therefor:

If any fishing vessel or boat of the United States is found fishing, or to have been fishing, or to be preparing to fish, within three marine miles of the shore within your district, you will please place an officer in charge thereof, and at once telegraph the facts to the Fisheries Department at Ottawa and await instructions.

To any foreign fishing vessels, boats or fishermen who may come within three marine miles of the shore of your district (but not fishing, preparing to fish, or having fished within such limit) you are requested to furnish a copy of the "Warning" and if any such vessel or boat shall not depart within 24 hours after receiving such "Warning" even though such vessel or boat is not engaged in fishing, preparing to fish, or having fished within the three-mile limit, you will place an officer in charge thereof, and at once telegraph the facts as before mentioned; or if it be ascertained, subsequently to serving the "Warning," that any vessel or boat served therewith, has been fishing or preparing to fish before or after such service, you are not to allow the twenty-four hours to expire, but put an officer on board at once and act as directed.

(Sd.) J. JOHNSON,  
*Commissioner of Customs.*



*Earl Granville to Lord Lansdowne.*

DOWNING STREET, 15th July, 1886.

MY LORD: I have the honour to acknowledge the receipt of your despatch of the 8th of June last, and to acquaint you that Her Majesty's Government observe with satisfaction the amendments which have been made in the Customs Circular No. 371 and in the warning to be given to the United States' fishing vessels frequenting the waters of Canada.

I have, etc.

(Sd.)

GRANVILLE.

His Excellency

The GOVERNOR GENERAL.

*Earl Granville to Lord Lansdowne.*

DOWNING STREET, 15th July, 1886.

MY LORD: With reference to my telegram of the 6th of July and to your telegraphic reply of the 12th instant, relating to warnings alleged to have been given to fishing vessels of the United States by the Collector of Customs at Canso, I have the honour to transmit to you the accompanying copy of a letter from the Foreign Office with its enclosure on which my telegram was founded.

I should be glad to receive a report from your Government at their early convenience on the subject of these papers.

I have, &amp;c.,

(Sd.)

GRANVILLE.

His Excellency

The GOVERNOR GENERAL.

[Enclosure No 1.]

*The Foreign Office to the Colonial Office.*

FOREIGN OFFICE, 30th June, 1886.

SIR: With reference to my letter of the 19th instant, I am directed by the Secretary of State for Foreign Affairs to transmit to you to be laid before Earl Granville, a copy of a despatch from Her Majesty's Minister at Washington, relative to the headland question in connection with the North American Fisheries.

I am, &amp;c.,

(Sd.)

J. PAUNCEFOTE.

The UNDER SECRETARY OF STATE

FOR THE COLONIES.

[Enclosure No. 2.]

*The Foreign Office to Colonial Office.*

FOREIGN OFFICE, 30th June, 1886.

SIR: With reference to your letter of the 26th instant, I am directed by the Earl of Rosebery, to state that His Lordship would be glad if Earl Granville could ascertain whether any instructions have been

given by the Canadian Government to Customs Officers on the subject of headland lines which might have given rise to the alleged claims to exclude United States' fishing vessels from the waters covered by lines drawn from Cape Canso to St. Esprit, and from North Cape to East Cape of Prince Edward Island.

I am, &c.,

(Sd.) J. PAUNCEFOTE.

The UNDER SECRETARY OF STATE  
FOR THE COLONIES.

[Enclosure No. 3.]

(Treaty No. 55.) *Sir L. West to Earl Roseberry.*

WASHINGTON, 15th June, 1886.

MY LORD: I have the honour to enclose to Your Lordship, herewith, copy of a note which I have received from the Secretary of State requesting the attention of Her Majesty's Government to certain warnings alleged to have been given to American fishing vessels by the Canadian authorities to keep outside imaginary lines drawn from headlands to headlands, which he characterizes as wholly unwarranted pretensions of extra territorial authority and usurpations of jurisdiction.

I have, &c.,

(Sd.) L. S. S. WEST.

The Right Honourable  
The SECRETARY OF STATE  
FOR FOREIGN AFFAIRS.

[Enclosure No. 4.]

*Mr. Bayard to Sir L. West.*

WASHINGTON, 14th June, 1886.

SIR: The Consul General of the United States, at Halifax, communicates to me the information derived by him from the Collector of Customs at that port, to the effect that American fishing vessels will not be permitted to land fish at that port of entry for transportation, in bond, across the Province.

I have also to inform you that the masters of the American fishing vessels of Gloucester, Mass., "Martha A. Bradley," "Rattler," "Eliza Boynton" and "Pioneer," have severally reported to the Consul General, at Halifax, that the Sub-Collector of Customs, at Canso, had warned them to keep outside an imaginary line drawn from a point three miles outside Canso Head to a point three miles outside St. Esprit, on the Cape Breton coast, a distance of forty miles. This line, for nearly its entire continuance, is distant twelve to twenty-five miles from the coast. The same masters also report that they were warned against going inside an imaginary line drawn from a point three miles outside North Cape, on Prince Edward Island, to a point three miles outside East Point, on the same island, a distance of over one hundred miles, and that this last named line was, for nearly that entire distance, about thirty miles from the shore.

The same authority informed the masters of the vessels referred to that they would not be permitted to enter Bay Chaleur.



Such warnings are, as you must be well aware, wholly unwarranted pretensions of extra-territorial authority and usurpation of jurisdiction by the provincial officers.

It becomes my duty in bringing this information to your notice, to request that if any such orders for interference with the unquestionable rights of the American fishermen to pursue their business without molestation, at any point not within three marine miles of the shores, and within the defined limits as to which renunciation of the liberty to fish was expressed in the Treaty of 1818, may have been issued, the same may at once be revoked as violation of the rights of citizens of the United States under Convention with Great Britain.

I will ask you to bring this subject to the immediate attention of Her Britannic Majesty's Government, to the end that proper remedial orders may be forthwith issued.

It seems most unfortunate and regrettable that questions which have been long since settled between the United States and Great Britain should now be sought to be revived.

I have, &c.,

(Sd.) T. F. BAYARD.

The Honourable

Sir LIONEL S. SACKVILLE WEST, K.C.M.G.

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*Mr. Bayard to Mr. Phelps.*

[Telegram.]

WASHINGTON, July 15, 1886.

PHELPS, Minister, London.

You will state to Lord Rosebery that realizing fully any embarrassment or delays, attendant upon pending changes of British administration, it is our duty to call upon the Imperial Government to put a stop to the unjust arbitrary and vexatious action of Canadian authorities towards our citizens engaged in open sea fishing and trading but not violating or contemplating violation of any law or treaty. Our readiness, long since expressed, to endeavor to come to a just and fair joint interpretation of treaty-rights and commercial privileges is illy met by persistent and unfriendly action of Canadian authorities which is rapidly producing a most injurious and exasperating effect.

I am without reply from the British Minister who is now absent.

BAYARD.

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*Mr. Bayard to Mr. Hardinge.*

DEPARTMENT OF STATE,  
Washington, July 16, 1886.

SIR: I have just received through the honorable C. A. Boutelle, M. C., the affidavit of Stephen R. Balkam, alleging his expulsion from the harbor of St. Andrews, New Brunswick, by Captain Kent, of the Dominion cruiser *Middleton*, and the refusal to permit him to pur-

chase fish caught and sold by Canadians, for the purpose of canning as sardines.

The action of Captain Kent seems to be a gross violation of ordinary commercial privileges against an American citizen proposing to transact his customary and lawful trade and not prepared or intending in any way to fish or violate any local law or regulation or treaty stipulation.

I trust instant instructions to prevent the recurrence of such unfriendly and unlawful treatment of American citizens may be given to the offending officials at St. Andrews, and reparation be made to Mr. Balkam.

I have, &c.,

T. F. BAYARD.

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*Mr. Hardinge to Mr. Bayard.*

BRITISH LEGATION,  
Washington, July 17, 1886. (Received July 19.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, protesting against the action of Captain Kent, of the Dominion cruiser *General Middleton*, in expelling Stephen R. Balkam from the harbor of St. Andrews, New Brunswick, and in refusing to permit him to purchase fish, caught and sold by Canadians, for the purpose of canning as sardines.

I have, &c.,

CHARLES HARDINGE.

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*Earl of Rosebery to Mr. Phelps.*

FOREIGN OFFICE, July 23, 1886.

SIR, I have the honour to acknowledge the receipt of your note of the 16th instant, inclosing a copy of a telegram from Mr. Bayard, in which he calls upon Her Majesty's Government to put a stop to the action of Canadian authorities towards United States' fishermen, which he characterizes as unjust, arbitrary, and vexatious.

Mr. Bayard further states that the readiness of the United States' Government to endeavour to come to a just and fair joint interpretation of Treaty rights and commercial privileges is ill met by persistent and unfriendly action of the Canadian authorities, which is rapidly producing a most injurious and exasperating effect.

I cannot help regretting that the tone of this communication should not have more corresponded with the conciliatory disposition of Her Majesty's Government, for the expressions which I have cited can hardly tend to facilitate a settlement of the difficult questions involved.

I beg, however, to state that the views of the Canadian Government upon the whole matter will very shortly be communicated to the United States' Government in a despatch which I have addressed to Her Majesty's Minister at Washington, in reply to the various communications which he has received from Mr. Bayard. I shall have the honour to place a copy of the despatch in question in your hands.

As regards the disposition expressed by Mr. Bayard to come to a just and fair joint interpretation of Treaty rights, Her Majesty's Government have already displayed their full readiness to negotiate



on more than one occasion, and their view of Treaty rights has been explained both in my conversations with yourself and in despatches.

I trust, therefore, that this expression of the wishes of your Government, corresponding as it does so entirely with our own desire, indicates the willingness of the United States to enter as speedily as possible into definite arrangements which may lead to negotiations on a practical basis for the settlement of this question.

I have, &c.,

ROSEBERRY.

E. J. PHELPS, Esq.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, July 30, 1886.

SIR: It is my duty to draw your attention to an infraction of the stipulations of the treaty between the United States of America and Great Britain, concluded October 20, 1818.

By the provisions of Article I of that convention the liberty to take fish of every kind, forever, in common with the subjects of His Britannic Majesty is secured to the inhabitants of the United States "on that part of the southern coast of Newfoundland, which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands," and on the other coasts and shores in the said article set forth.

Notwithstanding these plain provisions, I regret to be obliged to inform you that by the affidavit of the master of the American fishing vessel *Thomas F. Bayard*, that being at Bonne Bay, which is on the western coast of Newfoundland within the limits specified in Article I of the convention referred to, the master of the said vessel was formally notified by one N. N. Taylor, the officer of customs at that point, that his vessel would be seized if he attempted to obtain a supply of fish for bait or for any other transaction in connection with fishing operations within three marine miles of that coast.

To avoid the seizure of his vessel the master broke up his voyage and returned home.

I am also in possession of the affidavit of Alexander T. Eachern, master of the American fishing schooner *Mascot*, who entered Port Amherst, Magdalen Islands, and was there threatened by the customs official with seizure of his vessel if he attempted to obtain bait for fishing or to take a pilot.

These are flagrant violations of treaty rights of their citizens for which the United States expect prompt remedial action by Her Majesty's Government; and I have to ask that such instructions may be issued forthwith to the provincial officials of Newfoundland and of the Magdalen Islands as will cause the treaty rights of citizens of the United States to be duly respected.

For the losses occasioned in the two cases I have mentioned, compensation will hereafter be expected from Her Majesty's Government when the amount shall have been accurately ascertained.

I have, &c.,

T. F. BAYARD.

*Mr. Bayard to Mr. Phelps.*

No. 372.]

DEPARTMENT OF STATE,  
Washington, July 30, 1886.

SIR: Notwithstanding the express language of Article I of the convention between the United States and Great Britain, concluded October 20, 1818, by which it is provided that the inhabitants of the two contracting countries "shall have forever in common \* \* \* the liberty to take fish of every kind" on certain coasts therein described, and, as part thereof, "on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands on the western and northern coast of Newfoundland; from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coast, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson Bay Company," I have to-day received the sworn statements of the captain of an American fishing vessel, the *Thomas F. Bayard*, of Gloucester, Mass., to the effect that he has been hindered of his lawful rights, so expressly secured by the convention referred to, "to take fish of every kind" in the harbor of Bonne Bay, on the western coast of Newfoundland and within the geographical limits hereinbefore stated.

I inclose a copy of the affidavit and likewise of the formal notice received by the master of the *Thomas F. Bayard* from the customs officials at Bonne Bay, whereby, to avoid the seizure of his vessel by the local authority of Newfoundland, he was compelled to abstain from the exercise of his lawful right to obtain fish for bait to be used in the open-sea fishing, and to break up his voyage and return home, thus suffering great loss.

The affidavit of Captain McEachern, of the American schooner *Mascot*, of Gloucester, Mass., which I hand you herewith, discloses the fact of the threat of the customs officials at Port Amherst, in the Magdalen Islands, to seize his vessel should he there obtain fresh fish for bait, although those islands are expressly designated and included in the region wherein the liberty forever to take fish of every kind is expressly secured by the convention of 1818.

Previous attempts or suggestions have been made by the local authorities of Newfoundland to inhibit the purchase or sale of fresh fish for use as bait, and the same have been distinctly disapproved by Her Majesty's Government, notably by the Duke of Newcastle, when secretary of state for the colonies, in his dispatch of August 3, 1863, to the governor of Newfoundland, Sir A. Bannerman, a copy of which you will find at page 111 in the public document (Ex. Doc. No. 84, House of Representatives, Forty-sixth Congress, second session) sent you by this mail.

You will please draw the attention of Her Majesty's secretary of state for foreign affairs (Lord Iddesleigh) to these infractions of treaty rights, and request that such instructions may be promptly issued to the Newfoundland officials as will prevent a recurrence of such wrongs to the lawful pursuits of American citizens; and you will also notify his lordship that remuneration for the damages



incurred by the vessels and their owners in the cases referred to in this instruction will be claimed on behalf of the sufferers, so soon as the amount is accurately ascertained.

I am, &c.,

T. F. BAYARD.

[Inclosure No. 1.]

*Sworn statement of James McDonald, master of the Thomas F. Bayard, dated July 28, 1886, with accompanying notice served on him by N. N. Taylor, officer of customs, dated July 12, 1886.*

UNITED STATES OF AMERICA,

*Commonwealth of Massachusetts:*

I, James McDonald, of Gloucester, on my oath do say I am master and part owner of the schooner *Thomas F. Bayard*, a licensed vessel of the United States; that she sailed with a permit to trade from Gloucester June 22, on a trip for halibut. We fished on the north-west coast of Newfoundland, near Bonne Bay, where, my supply of bait being exhausted, I ran into the port July 12 and reported at the custom-house, stating to the collector that my purpose was to buy bait. The collector immediately served me with the notice hereto appended and made part of this affidavit. I had with me a copy of the Canadian Warning of March 5, 1886, which contained the clause 2 of the treaty of 1818. This I showed to the collector and argued that I had the right under the treaty there set out. In substance his reply was that he had an official duty to perform and would not permit me.

Fearing that my vessel would be seized should I remain or should I buy bait or take it, I determined to return to Gloucester, as my trip was broken up by reason of these threats in the notice and the action of the collector in refusing to recognize the rights secured to my vessel by the treaty. I arrived in Gloucester July 26. I say great losses and damages have inured to said vessel, her owner, and crew by reason of being warned off said coast and said Bonne Bay, as will be duly made to appear.

JAMES McDONALD.

COMMONWEALTH OF MASSACHUSETTS,

*Suffolk, ss:*

BOSTON, July 28, 1886.

Then personally appeared the above-named James McDonald and made oath that the foregoing statement by him subscribed is true.

CHARLES G. CHICK,

*Justice of the Peace.*

[Inclosure No. 2.]

*Mr. Taylor to Captain McDonald.*

BONNE BAY, July 12, 1886.

SIR: I am instructed to give you notice that the presence of your vessel in this port is in violation of the articles of the international convention of 1818 between Great Britain and the United States, in relation to fishery rights on the coast of Newfoundland, and of the laws in force in this country for the enforcement of the articles of the convention and that the purchase of bait or ice, or other transaction

in connection with fishery operations, within 3 miles of the coasts of this colony, will be in further violation of the terms of said convention and laws.

I am, &c.,

N. N. TAYLOR,  
*Officer of Customs.*

Capt. JAMES McDONALD,  
*Schooner Thomas F. Bayard.*

[Inclosure No. 3.]

*Sworn statement of Alexander McEachern, master of the Mascot,  
dated July 27, 1886.*

STATE OF MASSACHUSETTS,  
*County of Essex:*

GLOUCESTER, July 27, 1886.

Be it known that on the 27th day of July, in the year of our Lord 1886, before me, Aaron Parsons, a notary public, duly commissioned and sworn, and dwelling at Gloucester, in the county and State aforesaid, personally appeared Alexander McEachern, master of the schooner called *Mascot*, of this port, who deposes and says: That on the 10th day of June, 1886 A. D., I went into Port Amherst, Magdalen Islands, for the purpose of buying bait, but as soon as I went ashore I was met by the custom-house officials, who forbid me from so doing, stating they would seize my vessel, and I had no right to enjoy any privileges here except to get wood and water. I informed him that I wanted to take a pilot so I could find a spot where I was informed the fishing was good. He also said if I shipped such pilot or laid in port over twenty-four hours he would seize my vessel.

[SEAL.]

ALEX. MCEACHERN.

Before me.

AARON PARSONS, N. P.

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*Mr. Hardinge to Mr. Bayard.*

BRITISH LEGATION,  
*Washington, July 31, 1886. (Received August 2.)*

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, drawing my attention to an alleged infraction of the stipulations of the treaty of October 20, 1818, by the Newfoundland authorities at Bonne Bay, in threatening the master of the American fishing vessel *Thomas F. Bayard* with seizure of his ship in case of his attempting to obtain fish for bait or for any other transaction in connection with fishing operations within three marine miles of that coast; also, to the case of the United States fishing schooner *Mascot*, at Port Amherst, Magdalen Islands.

I have, &c.,

CHARLES HARDINGE.



*Mr. Hardinge to Mr. Bayard.*

BRITISH LEGATION,  
Washington, August 2, 1886. (Received August 3.)

SIR: With reference to the several communications received by Her Majesty's legation referring to the action of the Canadian authorities in connection with the present position of the North American fisheries question, I have the honor to forward to you herewith, in compliance with instructions which I have received from the Earl of Rosebery, printed copies of three dispatches and their inclosures addressed by his lordship to Her Majesty's minister on the 23d ultimo, stating the views of Her Majesty's Government, in reply to your notes to Sir L. West of the 10th, 20th, 29th May, and 14th June.

I have, &c.,

CHARLES HARDINGE.

[Inclosure 1.]

*The Earl of Rosebery to Sir L. West.*

FOREIGN OFFICE, July 23, 1886.

SIR: I have received your dispatch No. 28 (treaty), of the 11th of May last, inclosing a copy of a note addressed to you by Mr. Bayard, in which, whilst expressly referring to the seizure by the Canadian authorities of the American fishing vessels *Joseph Story* and *David J. Adams*, he discusses at length the present position of the North American fisheries question.

I have also received a communication upon the same subject from the United States minister at this court, dated the 2d June last, which, although advancing arguments of a somewhat different character, is substantially addressed to the consideration of the same question.

I think it therefore desirable to reply to these two communications together in the present dispatch, of which I shall hand a copy to Mr. Phelps.

The matter is one involving the gravest interests of Canada; and, upon receipt of the communications above mentioned, I lost no time in requesting the secretary of state for the colonies to obtain from the Government of the Dominion an expression of their views thereon. I now inclose a copy of an approved report of the Canadian privy council, in which the case of Canada is so fully set forth that I think it would be desirable, as a preliminary step to the further discussion of the questions involved in this controversy, to communicate a copy of it to Mr. Bayard, as representing the views of the Dominion Government; and I have to request that, in so doing, you will state that Her Majesty's Government will be glad to be favored with any observations which Mr. Bayard may desire to make thereon.

In regard to those portions of Mr. Phelps's note of the 2d June, in which he calls in question the competence of the Canadian authorities under existing statutes, whether imperial or colonial, to effect seizures of United States fishing vessels under circumstances such as those which appear to have led to the capture of the *David J. Adams*, I have to observe that Her Majesty's Government do not feel themselves at present in a position to discuss that question, which is now occupying the attention of the courts of law in the Dominion, and

which may possibly form the subject of an appeal to the judicial committee of Her Majesty's privy council in England.

It is believed that the courts in Canada will deliver judgment in the above cases very shortly; and until the legal proceedings now pending have been brought to a conclusion, Her Majesty's Government do not feel justified in expressing an opinion upon them, either as to the facts or the legality of the action taken by the colonial authorities.

I do not, therefore, conceive it to be at present necessary to make any specific reply to Mr. Bayard's further notes of the 11th and 12th May and 1st, 2d, and 7th June last. But with regard to his note of the 20th May, relative to the seizure of the United States fishing vessel *Jennie and Julia*, I inclose for communication to Mr. Bayard a copy of a report from the Canadian minister of marine and fisheries dealing with this case.

I cannot, however, close this dispatch without adding that Her Majesty's Government entirely concur in that passage of the report of the Canadian privy council, in which it is observed that "if the provisions of the convention of 1818 have become inconvenient to either contracting party, the utmost that good-will and fair dealing can suggest is that the terms shall be reconsidered."

It is assuredly from no fault on the part of Her Majesty's Government that the question has now been relegated to the terms of the convention of 1818. They have not ceased to express their anxiety to commence negotiations, and they are now prepared to enter upon a frank and friendly consideration of the whole question with the most earnest desire to arrive at a settlement consonant alike with the rights and interests of Canada and of the United States.

Where, as in the present case, conflicting interests are brought into antagonism by treaty stipulations the strict interpretation of which has scarcely been called in question, the matter appears to Her Majesty's Government to be pre-eminently one for friendly negotiation.

I am, &c.

[Sub-inclosure 1.]

*Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general on the 14th June, 1886.*

The committee of the privy council have had under consideration a report from the minister of marine and fisheries upon the communications dated 10th and 20th May last from the Hon. Mr. Bayard, Secretary of State of the United States, to Her Majesty's minister at Washington, in reference to the seizure of the American fishing-vessel *David J. Adams*.

The committee concur in the annexed report, and they advise that your excellency be moved to transmit a copy thereof to the Right Hon. the Secretary of State for the Colonies.

All of which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
*Clerk, Privy Council, Canada.*



## [Annex]

The undersigned having had his attention called by your excellency to a communication from Mr. Bayard, Secretary of State of the United States, dated the 10th May, and addressed to Her Majesty's minister at Washington, and to a further communication from Mr. Bayard, dated the 20th May instant, in reference to the seizure of the American fishing vessel *David J. Adams*, begs leave to submit the following observations thereon:

Your excellency's Government fully appreciates and reciprocates Mr. Bayard's desire that the administration of the laws regulating the commercial interests and the mercantile marine of the two countries might be such as to promote good feeling and mutual advantage.

Canada has given many indisputable proofs of an earnest desire to cultivate and extend her commercial relations with the United States, and it may not be without advantage to recapitulate some of those proofs.

For many years before 1854 the maritime provinces of British North America had complained to Her Majesty's Government of the continuous invasion of their inshore fisheries (sometimes accompanied, it was alleged, with violence) by American fishermen and fishing vessels.

Much irritation naturally ensued, and it was felt to be expedient by both Governments to put an end to this unseemly state of things by treaty, and at the same time to arrange for enlarged trade relations between the United States and the British North American colonies. The reciprocity treaty of 1854 was the result, by which were not only our inshore fisheries opened to the Americans, but provision was made for the free interchange of the principal natural products of both countries, including those of the sea. Peace was preserved on our waters, and the volume of international trade steadily increased during the existence of this treaty, and until it was terminated in 1866, not by Great Britain, but by the United States.

In the following year Canada (then become a dominion and united to Nova Scotia and New Brunswick) was thrown back on the convention of 1818, and obliged to fit out a marine police to enforce the laws and defend her rights, still desiring, however, to cultivate friendly relations with her great neighbor, and not too suddenly to deprive the American fishermen of their accustomed fishing grounds and means of livelihood. She readily acquiesced in the proposal of Her Majesty's Government for the temporary issue of annual licenses to fish on payment of a moderate fee. Your excellency is aware of the failure of that scheme. A few licenses were issued at first, but the applications for them soon ceased, and the American fishermen persisted in forcing themselves into our waters "without leave or license."

Then came the recurrence, in an aggravated form, of all the troubles which had occurred anterior to the reciprocity treaty. There were invasions of our waters, personal conflicts between our fishermen and American crews, the destruction of nets, the seizure and condemnation of vessels, and intense consequent irritation on both sides.

This was happily put an end to by the Washington treaty of 1871. In the interval between the termination of the first treaty and the ratification of that by which it was eventually replaced, Canada on

several occasions pressed, without success, through the British minister at Washington, for a renewal of the reciprocity treaty or for the negotiation of another on a still wider basis.

When in 1874 Sir Edward Thornton, then British minister at Washington, and the late Hon. George Brown, of Toronto, were appointed joint plenipotentiaries for the purpose of negotiating and concluding a treaty relating to fisheries, commerce, and navigation, a provisional treaty was arranged by them with the United States Government, but the Senate decided that it was not expedient to ratify it, and the negotiation fell to the ground.

The treaty of Washington, while it failed to restore the provisions of the treaty of 1854, for reciprocal free trade (except in fish), at least kept the peace, and there was tranquillity along our shores until July, 1885, when it was terminated again by the United States Government and not by Great Britain.

With a desire to show that she wished to be a good neighbor, and in order to prevent loss and disappointment on the part of the United States fishermen by their sudden exclusion from her waters in the middle of the fishing season, Canada continued to allow them, for six months, all the advantages which the rescinded fishery clauses had previously given them, although her people received from the United States none of the corresponding advantages which the treaty of 1871 had declared to be an equivalent for the benefits secured thereby to the American fishermen.

The President, in return for this courtesy, promised to recommend to Congress the appointment of a joint commission of the two Governments of the United Kingdom and the United States to consider the fishery question, with permission also to consider the whole state of trade relations between the United States and Canada.

This promise was fulfilled by the President, but the Senate rejected his recommendation and refused to sanction the commission.

Under these circumstances Canada, having exhausted every effort to procure an amicable arrangement, has been driven again to fall back upon the convention of 1818, the provisions of which she is now enforcing and will enforce, in no punitive or hostile spirit as Mr. Bayard supposes, but solely in protection of her fisheries, and in vindication of the right secured to her by treaty.

Mr. Bayard suggests that "the treaty of 1818 was between two nations—the United States of America and Great Britain—who, as the contracting parties, can alone apply authoritative interpretation thereto, and enforce its provisions by appropriate legislation."

As it may be inferred from this statement that the right of the Parliament of Canada to make enactments for the protection of the fisheries of the Dominion, and the power of the Canadian officers to protect those fisheries, are questioned, it may be well to state at the outset the grounds upon which it is conceived by the undersigned that the jurisdiction in question is clear beyond a doubt.

1. In the first place the undersigned would ask it to be remembered that the extent of the jurisdiction of the Parliament of Canada is not limited (nor was that of the Provinces before the union) to the sea-coast, but extends for three marine miles from the shore as to all matters over which any legislative authority can in any country be exercised within that space. The legislation which has been adopted on this subject by the Parliament of Canada (and previously to con-



federation by the Provinces) does not reach beyond that limit. It may be assumed that, in the absence of any treaty stipulation to the contrary, this right is so well recognized and established by both British and American law, that the grounds on which it is supported need not be stated here at large. The undersigned will merely add, therefore, to this statement of the position, that so far from the right being limited by the convention of 1818 that convention expressly recognizes it.

After renouncing the liberty to "take, cure, or dry fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Majesty's dominions in America," there is a stipulation that while American fishing vessels shall be admitted to enter such bays, &c., "for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, they shall be under such restrictions as may be necessary to prevent their taking, curing, or drying fish therein, or in any other manner whatever abusing the privileges reserved to them."

2. Appropriate legislation on this subject was, in the first instance, adopted by the Parliament of the United Kingdom. The imperial statute 59 Geo. III, cap. 38, was enacted in the year following the convention, in order to give that convention force and effect. That statute declared that, except for the purposes before specified, it should "not be lawful for any person or persons, not being a natural-born subject of His Majesty, in any foreign ship, vessel, or boat, nor for any person in any ship, vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of Great Britain and Ireland, to fish for, or to take, dry, or cure any fish of any kind whatever within three marine miles of any coasts, bays, creeks, or harbors whatever, in any part of His Majesty's dominions in America, not included within the limits specified and described in the first article of the said convention, and that if such foreign ship, vessel, or boat, or any person or persons on board thereof shall be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbors within such parts of His Majesty's dominions in America, out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited, and shall and may be seized, taken, sued for, prosecuted, recovered, and condemned by such and the like ways, means, and methods, and in the same courts as ships, vessels, or boats may be forfeited, seized, prosecuted, and condemned for any offense against any laws relating to the revenue of customs, or the laws of trade and navigation, under any act or acts of the Parliament of Great Britain or the United Kingdom of Great Britain and Ireland, provided that nothing contained in this act shall apply or be construed to apply to the ships or subjects of any prince, power, or state in amity with His Majesty who are entitled by treaty with His Majesty to any privileges of taking, drying, or curing fish on the coasts, bays, creeks, or harbors or within the limits in this act described. Provided always, that it shall and may be lawful for any fishermen of the said United States to enter into any such bays or harbors of His Britannic Majesty's dominions in America as are last mentioned, for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever,

subject nevertheless to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying, or curing fish in the said bays or harbors, or in any other manner whatever, abusing the said privileges by the said treaty and this act reserved to them, and as shall, for that purpose, be imposed by any order or orders to be from time to time made by His Majesty in council under the authority of this act, and by any regulations which shall be issued by the governor or person exercising the office of governor in any such parts of His Majesty's dominions in America, under or in pursuance of any such order in council as aforesaid. And that if any person or persons upon requisition made by the governor of Newfoundland, or the person exercising the office of governor, or by any governor in person exercising the office of governor in any other parts of His Majesty's dominions in America, as aforesaid, or by any officer or officers acting under such governor or person exercising the office of governor, in the execution of any orders or instructions from His Majesty in council, shall refuse to depart from such bays or harbors, or if any person or persons shall refuse, or neglect, to conform to any regulations or directions which shall be made or given for the execution of any of the purposes of this act, every such person so refusing or otherwise offending against this act shall forfeit the sum of two hundred pounds, to be recovered in the superior court of judicature of the island of Newfoundland, or in the superior court of judicature of the colony or settlement within or near to which such offense shall be committed, or by bill, plaint, or information in any of His Majesty's courts of record at Westminster, one moiety of such penalty to belong to His Majesty, his heirs and successors, and the other moiety to such person or persons as shall sue or prosecute for the same."

The acts passed by the Provinces now forming Canada, and also by the Parliament of Canada (now noted in the margin) <sup>a</sup> are to the same effect, and may be said to be merely declaratory of the law as established by the imperial statute.

3. The authority of the legislatures of the Provinces, and, after confederation, the authority of the Parliament of Canada, to make enactments to enforce the provisions of the convention, as well as the authority of Canadian officers to enforce those acts, rests on well-known constitutional principles.

Those legislatures existed, and the Parliament of Canada now exists, by the authority of the Parliament of the United Kingdom of Great Britain and Ireland, which is one of the nations referred to by Mr. Bayard as the "contracting parties." The colonial statutes have received the sanction of the British sovereign, who, and not the nation, is actually the party with whom the United States made the convention. The officers who are engaged in enforcing the acts of Canada or the laws of the Empire, are Her Majesty's officers, whether their authority emanates directly from the Queen, or from her representative, the governor-general. The jurisdiction thus exercised cannot, therefore, be properly described in the language used by Mr.

<sup>a</sup> Dominion acts, 31 Vict., cap 6; 33 Vict., cap. 16; now incorporated in Revised Statutes of 1886 cap. 90. Nova Scotia acts, Revised Statutes, 3d series, cap 94, 29 Vict. (1866), cap. 35. New Brunswick acts, 16 Vict. (1853), cap 69. Prince Edward Island acts, 6 Vict. (1843), cap. 14.



Bayard as a supposed and therefore questionable delegation of jurisdiction by the Imperial Government of Great Britain. Her Majesty governs in Canada as well as in Great Britain; the officers of Canada are her officers; the statutes of Canada are her statutes, passed on the advice of her Parliament sitting in Canada.

It is, therefore, an error to conceive that because the United States and Great Britain were, in the first instance, the contracting parties to the treaty of 1818, no question arising under that treaty can be "responsibly dealt with," either by the Parliament or by the authorities of the Dominion.

The raising of this objection now is the more remarkable, as the Government of the United States has long been aware of the necessity of reference to the colonial legislatures in matters affecting their interests.

The treaties of 1854 and 1871 expressly provide that, so far as they concerned the fisheries or trade relations with the provinces, they should be subject to ratification by their several legislatures; and seizures of American vessels and goods, followed by condemnation for breach of the provincial customs laws, have been made for forty years without protest or objection on the part of the United States Government.

The undersigned, with regard to this contention of Mr. Bayard, has further to observe that in the proceedings which have recently been taken for the protection of the fisheries, no attempt has been made to put any special or novel interpretation on the convention of 1818. The seizures of the fishing vessels have been made in order to enforce the explicit provisions of that treaty, the clear and long established provisions of the imperial statute and of the statutes of Canada expressed in almost the same language.

The proceedings which have been taken to carry out the law of the Empire in the present case are the same as those which have been taken from time to time during the period in which the convention has been in force, and the seizures of vessels have been made under process of the imperial court of vice-admiralty established in the provinces of Canada.

Mr. Bayard further observes that since the treaty of 1818, "a series of laws and regulations affecting the trade between the North American provinces and the United States have been respectively adopted by the two countries, and have led to amicable and mutually beneficial relations between their respective inhabitants," and that "the independent and yet concurrent action of the two Governments has effected a gradual extension from time to time of the provisions of article 1 of the convention of the 3d of July, 1815, providing for reciprocal liberty of commerce between the United States and the territories of Great Britain in Europe, so as gradually to include the colonial possessions of Great Britain in North America and the West Indies within the limits of that treaty."

The undersigned has not been able to discover, in the instances given by Mr. Bayard, any evidence that the laws and regulations affecting the trade between the British North American Provinces and the United States, or that "the independent and yet concurrent action of the two Governments" have either extended or restricted the terms of the convention of 1818, or affected in any way the right

to enforce its provisions according to the plain meaning of the articles of the treaty; on the contrary, a reference to the eighteenth article of the Washington treaty will show that the contracting parties made the convention the basis of the further privileges granted by the treaty, and it does not allege that its provisions are in any way extended or affected by subsequent legislation or acts of administration.

Mr. Bayard has referred to the proclamation of President Jackson in 1830, creating "reciprocal commercial intercourse on terms of perfect equality of flag" between the United States and the British American dependencies, and has suggested that these "commercial privileges have since received a large extension, and that in some cases 'favors' have been granted by the United States without equivalent 'concession,' such as the exemption granted by the shipping act of the 26th June, 1884, amounting to one-half of the regular tonnage dues on all vessels from British North America and West Indies entering ports of the United States."

He has also mentioned under this head "the arrangement for the transit of goods, and the remission by proclamation as to certain British ports and places of the remainder of the tonnage tax on evidence of equal treatment being shown" to United States vessels.

The proclamation of President Jackson in 1830 had no relation to the subject of the fisheries, and merely had the effect of opening United States ports to British vessels on terms similar to those which had already been granted in British ports to vessels of the United States. The object of these "laws and regulations" mentioned by Mr. Bayard was purely of a commercial character, while the sole purpose of the convention of 1818 was to establish and define the rights of the citizens of the two countries in relation to the fisheries on the British North American coast.

Bearing this distinction in mind, however, it may be conceded that substantial assistance has been given to the development of commercial intercourse between the two countries.

But legislation in that direction has not been confined to the Government of the United States, as indeed Mr. Bayard has admitted in referring to the case of the imperial shipping and navigation act of 1849.

For upwards of forty years, as has already been stated, Canada has continued to evince her desire for a free exchange of the chief products of the two countries. She has repeatedly urged the desirability of the fuller reciprocity of trade which was established during the period in which the treaty of 1854 was in force.

The laws of Canada with regard to the registry of vessels, tonnage dues, and shipping generally, are more liberal than those of the United States. The ports of Canada in inland waters are free to vessels of the United States, which are admitted to the use of her canals on equal terms with Canadian vessels.

Canada allows free registry to ships built in the United States and purchased by British citizens, charges no tonnage or light dues on United States shipping, and extends a standing invitation for a large measure of reciprocity in trade by her tariff legislation.

Whatever relevancy, therefore, the argument may have to the subject under consideration, the undersigned submits that the concessions which Mr. Bayard refers to as "favors" granted by United States can hardly be said not to have been met by equivalent conces-



sions on the part of the Dominion, and inasmuch as the disposition of Canada continues to be the same, as was evinced in the friendly legislation just referred to, it would seem that Mr. Bayard's charges of showing "hostility to commerce under the guise of protection to inshore fisheries," or of interrupting ordinary commercial intercourse by harsh measures and unfriendly administration, is hardly justified.

The questions which were in controversy between Great Britain and the United States prior to 1818 related not to shipping and commerce, but to the claims of United States fishermen to fish in waters adjacent to the British North American Provinces.

Those questions were definitely settled by the convention of that year, and although the terms of that convention have since been twice suspended, first by the treaty of 1854, and subsequently by that of 1871, after the lapse of each of these two treaties the provisions made in 1818 came again into operation, and were carried out by the Imperial and colonial authorities without the slightest doubt being raised as to their being in full force and vigor.

Mr. Bayard's contention that the effect of the legislation which has taken place under the convention of 1818, and of executive action thereunder, would be "to expand the restrictions and renunciations of that treaty which related solely to the inshore fishing within the three-mile limit, so as to affect the deep-sea fisheries," and "to diminish and practically destroy the privilege expressly secured to American fishing vessels to visit these inshore waters for the objects of shelter and repair of damages, and purchasing wood and obtaining water," appears to the undersigned to be unfounded. The legislation referred to in no way affects those privileges, nor has the Government of Canada taken any action towards their restriction. In the cases of the recent seizures, which are the immediate subject of Mr. Bayard's letter, the vessels seized had not resorted to Canadian waters for any one of the purposes specified in the convention of 1818 as lawful. They were United States fishing vessels, and, against the plain terms of the convention, had entered Canadian harbors. In doing so the *David J. Adams* was not even possessed of a permit "to touch and trade," even if such a document could be supposed to divest her of the character of a fishing vessel.

The undersigned is of opinion that while, for the reasons which he has advanced, there is no evidence to show that the Government of Canada has sought to expand the scope of the convention of 1818 or to increase the extent of its restrictions, it would not be difficult to prove that the construction which the United States seeks to place on that convention would have the effect of extending very largely the privileges which their citizens enjoy under its terms. The contention that the changes which may from time to time occur in the habits of the fish taken off our coasts, or in the methods of taking them, should be regarded as justifying a periodical revision of the terms of the treaty, or a new interpretation of its provisions, cannot be acceded to. Such changes may from time to time render the conditions of the contract inconvenient to one party or the other, but the validity of the agreement can hardly be said to depend on the convenience or inconvenience which it imposes from time to time on one or other of the contracting parties. When the operation of its provisions can be shown to have become manifestly inequitable, the utmost that good-

will and fair dealing can suggest is that the terms should be reconsidered and a new arrangement entered into; but this the Government of the United States does not appear to have considered desirable.

It is not, however, the case that the convention of 1818 affected only the inshore fisheries of the British Provinces; it was framed with the object of affording a complete and exclusive definition of the rights and liberties which the fishermen of the United States were thenceforward to enjoy in following their vocation, so far as those rights could be affected by facilities for access to the shores or waters of the British Provinces, or for intercourse with their people. It is therefore no undue expansion of the scope of that convention to interpret strictly those of its provisions by which such access is denied, except to vessels requiring it for the purposes specifically described.

Such an undue expansion would, upon the other hand, certainly take place if, under cover of its provisions, or of any agreements relating to general commercial intercourse which may have since been made, permission were accorded to United States fishermen to resort habitually to the harbors of the Dominion, not for the sake of seeking safety for their vessels or of avoiding risk to human life, but in order to use those harbors as a general base of operations from which to prosecute and organize with greater advantage to themselves the industry in which they are engaged.

It was in order to guard against such an abuse of the provisions of the treaty that amongst them was included the stipulation that not only should the inshore fisheries be reserved to British fishermen, but that the United States should renounce the right of their fishermen to enter the bays or harbors excepting for the four specified purposes, which do not include the purchase of bait or other appliances, whether intended for the deep-sea fisheries or not.

The undersigned, therefore, cannot concur in Mr. Bayard's contention that "to prevent the purchase of bait, or any other supply needed for deep-sea fishing, would be to expand the convention to objects wholly beyond the purview, scope, and intent of the treaty, and to give to it an effect never contemplated."

Mr. Bayard suggests that the possession by a fishing vessel of a permit to "touch and trade" should give her a right to enter Canadian ports for other than the purposes named in the treaty, or, in other words, should give her perfect immunity from its provisions. This would amount to a practical repeal of the treaty, because it would enable a United States collector of customs, by issuing a license, originally only intended for purposes of domestic customs regulation, to give exemption from the treaty to every United States fishing vessel. The observation that similar vessels under the British flag have the right to enter the ports of the United States for the purchase of supplies loses its force when it is remembered that the convention of 1818 contained no restriction on British vessels, and no renunciation of any privileges in regard to them.

Mr. Bayard states that in the proceedings prior to the treaty of 1818 the British commissioners proposed that United States fishing vessels should be excluded "from carrying also merchandise," but that this proposition "being resisted by the American negotiators, was abandoned," and goes on to say, "this fact would seem clearly to indicate that the business of fishing did not then, and does not now, disqualify vessels from also trading in the regular ports of entry. A



reference to the proceedings alluded to will show that the proposition mentioned related only to United States vessels visiting those portions of the coast of Labrador and Newfoundland on which the United States fishermen had been granted the right to fish, and to land for drying and curing fish, and the rejection of the proposal can, at the utmost, be supposed only to indicate that the liberty to carry merchandise might exist without objection in relation to those coasts, and is no ground for supposing that the right extends to the regular ports of entry, against the express words of the treaty.

The proposition of the British negotiators was to append to Article I the following words: "It is, therefore, well understood that the liberty of taking, drying, and curing fish, granted in the preceding part of this article, shall not be construed to extend to any privilege of carrying on trade with any of his Britannic Majesty's subjects residing within the limits hereinbefore assigned for the use of the fishermen of the United States."

It was also proposed to limit them to having on board such goods as might "be necessary for the prosecution of the fishery or the support of the fishermen while engaged therein, or in the prosecution of their voyages to and from the fishing grounds."

To this the American negotiators objected, on the ground that the search for contraband goods, and the liability to seizure for having them in possession, would expose the fishermen to endless vexation, and, in consequence, the proposal was abandoned. It is apparent, therefore, that this proviso in no way referred to the bays or harbors outside of the limits assigned to the American fishermen, from which bays and harbors it was agreed, both before and after this proposition was discussed, that United States fishing vessels were to be excluded for all purposes other than for shelter and repairs, and purchasing wood and obtaining water.

If, however, weight is to be given to Mr. Bayard's argument that the rejection of a proposition advanced by either side during the course of the negotiations should be held to necessitate an interpretation adverse to the tenor of such proposition, that argument may certainly be used to prove that American fishing vessels were not intended to have the right to enter Canadian waters for bait to be used even in the prosecution of the deep-sea fisheries. The United States negotiators in 1818 made the proposition that words "and bait" be added to the enumeration of the objects for which these fishermen might be allowed to enter, and the proviso as first submitted had read "provided, however, that American fishermen shall be permitted to enter such bays and harbors for the purpose only of obtaining shelter, wood, water, and bait." The addition of the two last words was, however, resisted by the British plenipotentiaries, and their omission acquiesced in by their American colleagues. It is, moreover, to be observed that this proposition could only have had reference to the deep-sea fishing, because the inshore fisheries had already been specifically renounced by the representatives of the United States.

In addition to this evidence, it must be remembered that the United States Government admitted, in the case submitted by them before the Halifax commission in 1877, that neither the convention of 1818 nor the treaty of Washington conferred any right or privilege of trading on American fishermen. The British case claimed compensa-

tion for the privilege which had been given since the ratification of the latter treaty to United States fishing vessels "to transfer cargoes, to outfit vessels, buy supplies, obtain ice, engage sailors, procure bait, and traffic generally in British ports and harbors."

This claim was, however, successfully resisted, and in the United States case it is maintained "that the various incidental and reciprocal advantages of the treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them by the enforcement of existing laws or the re-enactment of former oppressive statutes. Moreover, the treaty does not provide for any possible compensation for such privileges."

Now, the existing laws referred to in this extract are the various statutes passed by the imperial and colonial legislatures to give effect to the treaty of 1818, which, it is admitted in the said case, could at any time have been enforced (even during the existence of the Washington treaty), if the Canadian authorities had chosen to do so.

Mr. Bayard on more than one occasion intimates that the interpretation of the treaty and its enforcement are dictated by local and hostile feelings, and that the main question is being "obscured by partisan advocacy and distorted by the heat of local interests," and, in conclusion, expresses a hope that "ordinary commercial intercourse shall not be interrupted by harsh measures and unfriendly administrations."

The undersigned desires emphatically to state that it is not the wish of the Government or the people of Canada to interrupt for a moment the most friendly and free commercial intercourse with the neighboring Republic.

The mercantile vessels and the commerce of the United States have at present exactly the same freedom that they have for years passed enjoyed in Canada, and the disposition of the Canadian Government is to extend reciprocal trade with the United States beyond its present limits, nor can it be admitted that the charge of local prejudice or hostile feeling is justified by the calm enforcement, through the legal tribunals of the country, of the plain terms of a treaty between Great Britain and the United States, and of the statutes which have been in operation for nearly seventy years, excepting in intervals during which (until put an end to by the United States Government) special and more liberal provisions existed in relation to the commerce and fisheries of the two countries.

The undersigned has further to call attention to the letter of Mr. Bayard of the 20th May, relating also to the seizure of the *David J. Adams* in the port of Digby, Nova Scotia.

That vessel was seized, as has been explained on a previous occasion, by the commander of the Canadian steamer *Lansdowne*, under the following circumstances:

She was a United States fishing vessel, and entered the harbor of Digby for purposes other than those for which entry is permitted by the treaty and by the imperial and Canadian statutes.

As soon as practicable, legal process was obtained from the vice-admiralty court at Halifax, and the vessel was delivered to the officer of that court. The paper referred to in Mr. Bayard's letter as having



been nailed to her mast was doubtless a copy of the warrant which commanded the marshal or his deputy to make the arrest.

The undersigned is informed that there was no intention whatever of so adjusting the paper that its contents could not be read, but it is doubtless correct that the officer of the court in charge declined to allow the document to be removed. Both the United States consul-general and the captain of the *David J. Adams* were made acquainted with the reasons for the seizure, and the only ground for the statement that a respectful application to ascertain the nature of complaint was fruitless, was that the commander of the *Lansdowne*, after the nature of the complaint had been stated to those concerned and was published, and had become notorious to the people of both countries, declined to give the United States consul-general a specific and precise statement of the charges upon which the vessel would be proceeded against, but referred him to his superior.

Such conduct on the part of the officer of the *Lansdowne* can hardly be said to have been extraordinary under the present circumstances.

The legal proceedings had at that time been commenced in the court of vice-admiralty at Halifax, where the United States consul-general resides, and the officer at Digby could not have stated with precision, as he was called upon to do, the grounds on which the intervention of the court had been claimed in the proceedings therein.

There was not, in this instance, the slightest difficulty in the United States consul-general and those interested in the vessel obtaining the fullest information, and no information which could have been given by those to whom they applied was withheld.

Apart from the general knowledge of the offenses which it was claimed the master had committed, and which was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the registry of the court, and from the solicitors of the crown, and would have been furnished immediately on application to the authority to whom the commander of the *Lansdowne* requested the United States consul-general to apply. No such information could have been obtained from the paper attached to the vessel's mast.

Instructions have, however, been given to the commander of the *Lansdowne* and other officers of the marine police, that, in the event of any further seizure, a statement in writing shall be given to the master of the seized vessel of the offenses for which the vessel may be detained, and that a copy thereof shall be sent to the United States consul-general at Halifax, and to the nearest United States consular agent, and there can be no objection to the solicitor for the crown being instructed likewise to furnish the consul-general with a copy of the legal process in each case, if it can be supposed that any fuller information will thereby be given.

Mr. Bayard is correct in his statement of the reasons for which the *David J. Adams* was seized, and is now held. It is claimed that the vessel violated the treaty of 1818, and consequently the statutes which exist for the enforcement of the treaty, and it is also claimed that she violated the customs laws of Canada of 1883.

The undersigned recommends that copies of those statutes be furnished for the information of Mr. Bayard.

Mr. Bayard has, in the same dispatch, recalled the attention of Her Majesty's minister to the correspondence and action which took place in the year 1870, when the fishery question was under consideration,

and especially to the instructions from the lords of the admiralty to Vice-Admiral Wellesley, in which that officer was directed to observe great caution in the arrest of American fishermen, and to confine his action to one class of offenses against the treaty. Mr. Bayard, however, appears to have attached unwarranted importance to the correspondence and instructions of 1870, when he refers to them as implying "an understanding between the two Governments," an understanding, which should, in his opinion, at other times, and under other circumstances, govern the conduct of the authorities, whether imperial or colonial, to whom under the laws of the Empire is committed the duty of enforcing the treaty in question.

When, therefore, Mr. Bayard points out the "absolute and instant necessity that now exists for a restriction of the seizure of American vessels charged with violations of the treaty of 1818" to the conditions specified under those instructions, it is necessary to recall the fact that in the year 1870 the principal cause of complaint on the part of Canadian fishermen was that the American vessels were trespassing on the inshore fishing grounds and interfering with the catch of mackerel in Canadian waters, the purchase of bait being then a matter of secondary importance.

It is probable, too, that the action of the imperial Government was influenced very largely by the prospect which then existed of an arrangement such as was accomplished in the following year by the treaty of Washington, and that it may be inferred, in view of this disposition made apparent on both sides to arrive at such an understanding, that the imperial authorities, without any surrender of imperial or colonial rights, and without acquiescing in any limited construction of the treaty, instructed the vice-admiral to confine his seizures to the more open and injurious class of offenses which were especially likely to be brought within the cognizance of the naval officers of the imperial service.

The Canadian Government, as has been already stated, for six months left its fishing grounds open to American fishermen, without any corresponding advantage in return, in order to prevent loss to those fishermen, and to afford time for the action of Congress, on the President's recommendation that a joint commission should be appointed to consider the whole question relating to the fisheries.

That recommendation has been rejected by Congress. Canadian fish is by prohibitory duties excluded from the United States market. The American fishermen clamor against the removal of those duties, and, in order to maintain a monopoly of the trade, continue against all law to force themselves into our waters and harbors, and make our shores their base for supplies, especially for bait, which is necessary to the successful prosecution of their business.

They hope by this course to supply the demand for their home market, and thus to make Canada indirectly the means of injuring her own trade.

It is surely, therefore, not unreasonable that Canada should insist on the rights secured to her by treaty. She is simply acting on the defensive, and no trouble can arise between the two countries if American fishermen will only recognize the provisions of the convention of 1818 as obligatory upon them, and until a new arrangement is made, abstain both from fishing in her waters and from visiting



her bays and harbors for any purpose save those specified in the treaty.

In conclusion, the undersigned would express the hope that the discussion which has arisen on this question may lead to renewed negotiations between Great Britain and the United States, and may have the result of establishing extended trade relations between the Republic and Canada, and of removing all sources of irritation between the two countries.

GEORGE E. FOSTER,  
*Minister of Marine and Fisheries.*

[Inclosure No. 2.]

*The Earl of Rosebery to Sir L. West.*

FOREIGN OFFICE, *July 23, 1886.*

SIR: I have to acknowledge the receipt of your dispatch No. 46 (treaty), of the 30th May last, inclosing a copy of a note from Mr. Bayard, in which he protests against the provisions of a bill recently introduced into the Canadian Parliament for the purpose of regulating fishing operations by foreign vessels in Canadian waters.

In reply I inclose an extract of a dispatch from the governor-general of Canada, containing observations on the subject.

I have to add that Her Majesty's Government entirely concur in the views expressed by the Marquis of Lansdowne in this extract, of which you will communicate a copy to Mr. Bayard, together with a copy of the present dispatch.

With regard to Mr. Bayard's observations in the same note respecting a customs circular and a warning issued by the Canadian authorities, and dated respectively the 7th May and the 5th March last, I have to acquaint you that these documents have now been amended so as to bring them into exact accordance with treaty stipulations; and I inclose, for communication to the United States Government, printed copies of these documents as amended.

I am, &c.

[Inclosure No. 3.]

*The Earl of Rosebery to Sir L. West.*

FOREIGN OFFICE, *July 23, 1886.*

SIR: I have received your dispatch No. 55, Treaty, of the 15th ultimo, in which you inclose a copy of a note from Mr. Bayard, protesting against a warning alleged to have been given to United States fishing vessels by a Canadian customs official, with the view to prevent them from fishing within lines drawn from headland to headland from Cape Canso to St. Esprit, and from North Cape to East Point of Prince Edward Island.

In reply, I have to request you to acquaint Mr. Bayard that Her Majesty's Government have ascertained that no instructions to this effect have been issued by the Canadian Government, but that a further report is expected upon the subject.

It appears that the collector at Canso, in conversation with the master of a fishing vessel, expressed the opinion that the headland line ran from Cranberry Island to St. Esprit, but this was wholly unauthorized.

I am, &c.

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*Mr. Bayard to Mr. Hardinge.*

DEPARTMENT OF STATE,  
Washington, August 9, 1886.

SIR: I regret that it has become my duty to draw the attention of Her Majesty's Government to the unwarrantable and unfriendly treatment, reported to me this day by the United States consul-general at Halifax, experienced by the American fishing schooner *Rattler*, of Gloucester, Mass., on the 3d instant, upon the occasion of her being driven by stress of weather to find shelter in the harbor of Shelburne, Nova Scotia.

She was deeply laden and was off the harbor of Shelburne when she sought shelter in a storm and cast anchor just inside the harbor's entrance.

She was at once boarded by an officer of the Canadian cutter *Terror*, who placed two men on board.

When the storm ceased the *Rattler* weighed anchor to proceed on her way home, when the two men placed on board by the *Terror* discharged their pistols as a signal, and an officer from the *Terror* again boarded the *Rattler* and threatened to seize the vessel unless the captain reported at the custom-house.

The vessel was then detained until the captain reported at the custom-house, after which she was permitted to sail.

The hospitality which all civilized nations prescribe has thus been violated and the stipulations of a treaty grossly infringed.

A fishing vessel, denied all the usual commercial privileges in a port, has been compelled strictly to perform commercial obligations.

In the interests of amity, I ask that this misconduct may be properly rebuked by the Government of Her Majesty.

I have, &c.,

T. F. BAYARD.

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*Mr. Presson to Mr. Bayard.*

COLLECTOR'S OFFICE,  
Gloucester, Mass., August 9, 1886. (Received August 11.)

SIR: I am requested to forward the inclosed affidavit of Capt. Daniel McDonald of schooner *Hereward*, of Gloucester, in regard to his detention at Cape Canso, Nova Scotia, July 2.

Very respectfully, &c.,

D. S. PRESSON,  
Collector.



[Inclosure.]

*Affidavit of Captain McDonald, of the schooner Hereward.*

GLOUCESTER, August 6, 1886.

I, Daniel McDonald, master of American schooner *Hereward*, of Gloucester, do depose and say: That I went into Cape Canso, N. S., with my vessel, on the afternoon of July 2, and went to the custom-house and reported. One of my crew went on shore without authority and failed to return at night; some of the crew thought he had deserted and engaged another man to take his place (all without any authority from me), but he returned the next morning.

The next morning the collector, Mr. Young, came on board and demanded my papers (charging me with shipping a man). I gave them to him, and he kept them until 10.30 o'clock that eve, when he returned them to me. As I was all ready to sail that morning, it detained the vessel two (2) days in that port, as the next day was Sunday.

DANIEL M'DONALD.

MASSACHUSETTS, *Essex*, ss:

AUGUST 6, 1886.

Personally appeared D. McDonald, and made oath to the above.  
Before me.

[L. s.]

AARON PARSONS,  
Notary Public.*Mr. Hardinge to Mr. Bayard.*

WASHINGTON, August 10, 1886.

(Received August 11.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday, drawing the attention of Her Majesty's Government to the alleged unwarrantable and unfriendly treatment experienced by the American fishing schooner *Rattler*, on the 3d instant, upon the occasion of her being driven by stress of weather to find shelter in the harbor of Shelburne, Nova Scotia.

I have, &amp;c.,

CHARLES HARDINGE.

*Mr. Presson to Mr. Bayard.*

CUSTOM-HOUSE, GLOUCESTER, MASS.,  
*Collector's Office*, August 10, 1886. (Received August 11.)

SIR: In reply to your telegram of 5th instant I inclose affidavits of Captain Cunningham, of schooner *Rattler*, and his passenger and crew, in relation to their treatment at Shelburne, Nova Scotia, on going in there for shelter on 3d instant.

Very respectfully, &amp;c.,

D. S. PRESSON,  
Collector.

[Inclosure.]

*Affidavit of Captain Cunningham, of the schooner Rattler.*

I, Augustus F. Cunningham, master of the schooner *Rattler*, of Gloucester, being duly sworn, do depose and say: That on Thursday, July 8, 1886, we sailed from Gloucester on a mackerel cruise. On Tuesday August 3d (having secured a fare of mackerel and while on our passage home), at 7 p. m., the wind blowing hard, the sea being rough, and our vessel being deeply loaded, with two large seine-boats on deck, we put into the harbor of Shelburne, N. S., for shelter. Just inside of the harbor we were brought to by a gun fired from the Canadian cruiser *Terror*, Captain Quigley, and came to anchor.

Immediately a boat from the *Terror* came alongside and its commander, Lieutenant Bennett, asked why we were in the harbor. My reply was, "For shelter." Then taking the name of our vessel, names of owner and captain, where from, where bound, and how many fish we had, and forbidding any of the crew to go on shore, he returned to the *Terror* for further instructions.

Boarding us again, after a lapse of perhaps forty-five minutes, he put two armed men on board of us, asked for our crew-list, and said if I remained until morning I must enter at the custom-house, but if I could sail in the night to tell his men to fire a revolver and a boat would be sent to take them off. At 12 o'clock that night, preferring to risk the dangers of the sea to the danger of seizure, I ordered the anchor hove short, the mainsail hoisted preparatory to sailing, and told one of the *Terror's* men to fire a revolver, which he did.

Receiving no reply, and seeing no signs of life on board the *Terror*, I ordered the revolver to be fired again. This brought a boat from the *Terror*, commanded by First Lieutenant Bennett, who boarded my schooner, gave each of the two men on board an extra revolver, and told me the orders of Captain Quigley were, that I should not leave the port until I had reported to the customs officer at Shelburne. Upon receipt of these orders I payed out the chain and lowered the mainsail. The boat went back to the *Terror* and immediately returned with Captain Quigley on board.

He denied the permission given me by his first officer to sail in the night and ordered me to go to Shelburne and enter and clear at the custom-house there.

I asked him how I should go, as we were 8 miles distant from the custom-house. His reply was, "I don't care, sir, how you go; but you must go there; and on your return show your clearance to me or suffer the consequences." He told me my vessel was in charge of his two men, and to them he gave these orders:

"Gunner, you will allow the captain to proceed to Shelburne with the vessel, come to anchor, take his dory and two men, no more, and go on shore to enter. Allow them to bring nothing off in their dory; and if a man puts his hand on the wheel or to go to sea, chop his arm off or shoot him, as the case may require."

I asked him if the law was not very strict that did not allow a vessel arriving at night after office hours to proceed before daylight, and why the law was enforced. He replied, it was to prove that Canadian harbors were a benefit to American fishermen.



At daylight we got under way and started for Shelburne, and Lieutenant Bennett and four more armed men came on board. We arrived at Shelburne about 4.30 o'clock a. m. I went on shore with Lieutenant Bennett and his boat's crew, woke up Collector Atwood, who, after inquiring of the lieutenant if there were any charges against me, entered and cleared the vessel.

On my return to the vessel the lieutenant requested me to exhibit my clearance, which I did, and we were then allowed to depart. I would state that when we first entered the harbor of Shelburne a Canadian vessel entered just ahead of us, and she was unmolested, sailing at her pleasure during the night, which showed plainly that an American vessel was not accorded the same treatment in Canadian ports as are Canadian vessels, although, as the collector at Halifax informed me in June last, the same laws applied to Canadian vessels as to American vessels.

During the whole difficulty my language was respectful and I quietly submitted to the detention, to the sarcastic language and overbearing conduct of Captain Quigley, but I deem my treatment and detention severe and unjust and an outrage upon the international courtesy that should exist between two friendly nations.

A. F. CUNNINGHAM.

I, Lawson C. Rich, of Canton, N. Y., a passenger on board schooner *Rattler* with Captain Cunningham, do depose and say that the above statement of Captain Cunningham is true in every particular.

LAWSON CARTER RICH.

MASSACHUSETTS, *Essex*, 88:

AUGUST 9, 1886.

Personally appeared A. F. Cunningham and L. C. Rich and made oath to the truth of the above statement.

Before me.

[L. S.]

AARON PARSONS,  
Notary Public.

We, William Bowie, Frederick Brooks, Charles Lowry, Charles Hart, George Vibert, John Hart, John Lowry, Daniel McLean, Alexander O'Neil, James Levange, and Martin Guthrie, of the crew of schooner *Rattler*, do depose and say that the above statement of Captain Cunningham is true in every particular.

WM. BOWIE.  
FRED. BROOKS.  
CHARLES LOWRY.  
CHARLES HART.  
GEORGE VIBERT.  
JOHN G. HART.

JOHN LOWRIE.  
DAN MCLEAN.  
ALEX. O'NEIL.  
JAMES LEVANGE.  
MARTIN GUTHRIE.

MASSACHUSETTS, *Essex*, 88:

AUGUST 10 1886.

Personally appeared the above-named persons, crew of schooner *Rattler*, and made oath to the truth of the above.

Before me.

[L. S.]

AARON PARSONS,  
Notary Public.

*Mr. Presson to Mr. Bayard.*

CUSTOM-HOUSE, GLOUCESTER, MASS.,  
*Collector's Office, August 14, 1886.*  
 (Received August 16.)

SIR: I inclose affidavit of Capt. Reuben Cameron, of schooner *Golden Hind*, of this port, who was forbidden to enter the harbor of Port Daniels, N. S., for water. This being a clear violation by the Canadian Government of the treaty of 1818, I respectfully submit the case for your consideration.

Very respectfully, yours, &c.,

D. S. PRESSON,  
*Collector.*

[Inclosure.]

*Affidavit of Captain Cameron, of the schooner Golden Hind.*

I, Reuben Cameron, master of the American schooner *Golden Hind*, of Gloucester, do depose and say: That we sailed from Gloucester July 3, 1886, bound to the Bay of St. Lawrence, on a fishing voyage. That on or about July 23, being out of water, started to go into the Bay of Chaleurs (Port Daniel) to fill water. At the entrance of the bay, four or five miles from land, was met by the Canadian schooner *E. F. Conrad*; an officer came on board, took my name, name of vessel, tonnage, name of owner, &c., and ordered me not to go into Bay of Chaleurs. He also furnished me with a printed "warning," with this indorsement written thereon: "Don't enter the Bay of Chaleurs, N. S." After this warning I put to sea, and was obliged to go across to Tignish, P. E. I., to obtain a supply of water for use of my crew.

This delayed me at least a week, and the loss of at least a good trip of mackerel, as during that time another vessel from the same firm, in five days, on the same fishing grounds, took 460 barrels of mackerel, and caused a loss to my owners of at least five thousand dollars (\$5,000).

REUBEN CAMERON,  
*Master.*

We, the undersigned, a part of the crew of the schooner *Golden Hind*, do depose and say that the above statement of Captain Cameron is true in every particular.

JAMES A. POWELL.  
 GILBERT SMITH.

AUGUST 13, 1886.

MASSACHUSETTS, *Essex*, ss:

Personally appeared Reuben Cameron, James A. Powell, and Gilbert Smith, and made oath to the above.

Before me,

[L. S.]

AARON PARSONS, *N. P.*



*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, August 17, 1886.

SIR: An affidavit has been filed in this Department by Reuben Cameron, master of the American schooner *Golden Hind*, of Gloucester, Mass., setting forth that, on or about the 23d of July ultimo, being out of water, he attempted to put into Port Daniel, Bay of Chaleurs, to obtain a fresh supply; that at the entrance of the bay, about four or five miles from land, the *Golden Hind* was boarded by an officer from the Canadian schooner *E. F. Conrad*, and by him ordered not to enter the Bay of Chaleurs; that said officer furnished Captain Cameron with a printed warning with this indorsement written thereon: "Don't enter the Bay of Chaleurs, M. S.;" and that in consequence of said act of the Canadian officer the *Golden Hind* was obliged to go across to Tignish, Prince Edward Island, to obtain water, whereby his fishing venture was interfered with, and loss and injury caused to the vessel and her owners.

I have the honor to protest against this act of officers of her Britannic Majesty as not only distinctly unfriendly and contrary to the humane usages of civilized nations, but as in direct violation of so much of Article I of the convention of 1818 between the United States and Great Britain as secures forever to American fishermen upon the British North American coast admission to the bays or harbors thereof for the purpose of obtaining water. And for all loss or injury which may be shown to have accrued by reason of the act in question the Government of Her Britannic Majesty will be held justly liable.

I have further the honor to ask with all earnestness that the Government of Her Britannic Majesty will cause steps to be forthwith taken to prevent and rebuke acts so violative of treaty and of the common rites of hospitality.

I have, &c.,

T. F. BAYARD.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, August 18, 1886.  
(Received August 19.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday, protesting against the action of the officer of the Dominion schooner *E. F. Conrad*, in forbidding the master of the American schooner *Golden Hind* to enter the Bay of Chaleur for the purpose of renewing his supply of fresh water at that place.

I have, &c.,

L. S. SACKVILLE WEST.

*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, August 18, 1886.

SIR: Grave cause of complaint is alleged by the masters of several American fishing vessels, among which can be named the schooners *Shiloh* and *Julia Ellen*, against the hostile and outrageous misbehavior of Captain Quigley, of the Canadian cruiser *Terror*, who, upon the entrance of these vessels into the harbor of Liverpool, Nova Scotia, fired a gun across their bows to hasten their coming to, and placed a guard of two armed men on board each vessel, who remained on board until the vessels left the harbor.

In my note to your legation of the 9th instant I made earnest remonstrance against another unfriendly act of Captain Quigley, against the schooner *Rattler*, of Gloucester, Mass., which, being fully laden and on her homeward voyage, sought shelter from stress of weather in Shelburne Harbor, Nova Scotia, and was then compelled to report at the custom-house, and have a guard of armed men kept on board.

Such conduct cannot be defended on any just ground, and I draw your attention to it in order that Her Britannic Majesty's Government may reprimand Captain Quigley for his unwarranted and rude act.

It was simply impossible for this officer to suppose that any invasion of the fishing privileges of Canada was intended by these vessels under the circumstances.

The firing of a gun across their bows was a most unusual and wholly uncalled for exhibition of hostility, and equally so was the placing of armed men on board the peaceful and lawful craft of a friendly nation.

I have, &c.,

T. F. BAYARD.

*Sir L. West to Mr. Bayard.*

WASHINGTON, August 18, 1886.

(Received August 19.)

SIR: With reference to your note of the 2d ultimo reporting to me the detention of the American schooner *City Point*, of Portland, Me., by the Canadian authorities at the port of Shelburne, Nova Scotia, and protesting against their action in so doing, I have the honor to inform you, in accordance with instructions which I have received from Her Majesty's Government, that the master of the schooner *City Point* committed a breach of the customs laws of the Dominion by not reporting to customs and landing part of the crew and luggage. The vessel in question was subsequently released on deposit of \$400.

I have, &c.,

L. S. SACKVILLE WEST.



*Sir L. West to Mr. Bayard.*

WASHINGTON, *August 19, 1886.*

(Received August 20.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday informing me of the causes of complaint alleged by the masters of several American fishing vessels against Captain Quigley, of the Canadian cruiser *Terror*.

I have, &c.,

L. S. SACKVILLE WEST.

*Sir L. West to Mr. Bayard.*

BRITISH LEGATION, *September 1, 1886.*

(Received September 2.)

SIR: With reference to your note of the 30th of July last, calling attention to the cases of the *Thomas F. Bayard* and the *Mascot*, I have the honor to inform you, in pursuance of instructions from Her Majesty's secretary of state for foreign affairs, that immediate inquiry will be made into the matter with the view that the right secured by the convention of 1818 to United States fishermen shall in no wise be prejudiced.

I have, &c.,

L. S. SACKVILLE WEST.

*The Earl of Iddesleigh to Mr. Phelps.*

FOREIGN OFFICE, *September 1, 1886.*

SIR: Her Majesty's Government have been anxiously considering what further action they can take in the present state of the Canadian Fisheries question to advance matters towards the friendly and equitable solution so much desired by both Governments, and I beg now to offer the following observations in order to explain the difficulties which present themselves.

There are two distinct issues involved. The one relates to the precise limits of the Treaty rights of American fishermen in Canadian waters; the other to the legality of the measures adopted by the Canadian authorities (having regard to the existing legislation) against certain American fishing-vessels for an alleged violation of Treaty.

Both those issues are at the present time *sub judice* in the Canadian Courts, and it is not improbable that they will be carried before the competent Tribunal of Appeal in this country.

If the ultimate decision should be favourable to the views of your Government as regards the interpretation of the Treaty of 1818, the principal question will be disposed of; and if the decision should be adverse to those views, it will not preclude further discussion between the two Governments and the adjustment of the question by diplomatic action. But it is clearly right, and according to practice and precedent, that such diplomatic action should be suspended during the completion of the judicial inquiry.

In the present case, however, there is every reason to desire that the two Governments, without awaiting the result of the judicial proceedings, should allay the popular feeling which these differences have excited in both countries, by an attempt to effect such an equitable revision of the Treaty as may reconcile conflicting interests.

With this view my predecessor addressed a despatch to Her Majesty's Minister at Washington, containing a Report from the Canadian Government on all the points involved, and instructed him to communicate it to your Government, and to invite their friendly observations upon that document, in the hope that such an interchange of views might lead to some basis of negotiation.

No reply has been received by Her Majesty's Government to that communication, but assurances have repeatedly been exchanged between the two Governments of their desire to come to an arrangement.

The hopes which were entertained at one time of a settlement on a broad and comprehensive basis by means of a new Commercial Treaty were unfortunately frustrated by the rejection of the proposal for a Joint Commission.

It may be, however, that a more restricted basis might be acceptable to your Government, such, for instance, as an arrangement limited entirely to the fishery interests.

It is evident that the great desire of both Governments to arrive at an equitable arrangement cannot be attained unless they are both prepared to make some concessions.

The nature of the concessions which it would be in the power of this country to make with reference to the Canadian fisheries are well known; but Her Majesty's Government, who have naturally been in constant communication with the Dominion Government on this question, are quite unable to make any proposal to them of the nature contemplated, unless they are informed to what extent the United States Government are disposed to meet them in the way of concession.

Her Majesty's Government therefore earnestly hope that the Government of the United States may find themselves able to view the position in the light in which I have placed it before you, and by a frank declaration of the nature of the benefits which they are prepared to offer on their side to facilitate the efforts of Her Majesty's Government to take some immediate action towards the settlement of this most important and urgent question.

I have, &c.,

IDDLESLEIGH.

E. J. PHELPS, Esq.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
*Washington, September 10, 1886.*

SIR: It is my duty to ask you to bring to the attention of Her Britannic Majesty's Government the treatment lately experienced by an American fishing vessel, the *Mollie Adams*, of Gloucester, Mass., at the hands of the collector of customs at Port Mulgrave, in the Strait of Canso, Nova Scotia.



By the sworn statement of Solomon Jacobs, master of the schooner *Mollie Adams*, it appears that on the 31st ultimo, whilst on his homeward voyage laden with fish from the fishing banks, he was compelled to put into Port Mulgrave to obtain water, and duly made report and entry at the custom house. The water-tank of the vessel having been burst in his voyage by heavy weather and thus rendered useless, he asked permission of the collector to purchase two or three barrels to hold a supply of water for his crew on their homeward voyage of about 500 miles.

This application was refused and his vessel threatened with seizure if barrels were so purchased. In consequence the vessel was compelled to put to sea with an insufficient supply of water, and in trying to make some other port wherein to obtain water a severe gale was encountered which swept away his deck-load of fish and destroyed two seine boats.

This inhospitable, indeed inhuman, conduct on the part of the customs officer in question should be severely reprimanded, and for the infraction of treaty rights and commercial privileges compensation equivalent to the injuries sustained will be claimed from Her Majesty's Government.

I have, &c.,

T. F. BAYARD.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, *September 11, 1886.*

(Received September 14.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date calling attention to the case of the *Mollie Adams*.

I have, &c.,

L. S. SACKVILLE WEST.

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*Mr. Phelps to Lord Iddesleigh.*

LEGATION OF THE UNITED STATES,

*London, September 11, 1886.*

MY LORD: I have the honor to acknowledge the receipt of your note of September 1, on the subject of the Canadian fisheries.

I received also on the 16th of August, last, from Lord Rosebery, then foreign secretary, a copy of a note on the same subject, dated July 23, 1886, addressed by his Lordship, through the British minister at Washington, to Mr. Bayard, the Secretary of State of the United States, in reply to a note from Mr. Bayard to the British minister of May 10, and also to mine addressed to Lord Rosebery under date of June 2. The retirement of Lord Rosebery from office immediately after I received his note, prevented a continuance of the discussion with him. And in resuming the subject with your lordship, it may be proper to refer both to Lord Rosebery's note and to your own. In doing so I repeat in substance considerations expressed to you orally in recent interviews.

My note to Lord Rosebery was confined to the discussion of the case of the *David J. Adams*, the only seizure in reference to which the details had then been fully made known to me. The points presented in my note, and the arguments in support of them, need not be repeated.

No answer is attempted in Lord Rosebery's reply. He declines to discuss the questions involved on the ground that they are "now occupying the attention of the courts of law in the Dominion, and may possibly form the subject of an appeal to the judicial committee of Her Majesty's privy council in England."

He adds:

"It is believed that the courts in Canada will deliver judgment in the above cases very shortly, and until the legal proceedings now pending have been brought to a conclusion, Her Majesty's Government do not feel justified in expressing an opinion upon them, either as to facts or the legality of the action taken by the colonial authorities."

And your lordship remarks, in your note of September 1, "it is clearly right, according to practice and precedent, that such diplomatic action should be suspended pending the completion of the judicial inquiry."

This is a proposition to which the United States Government is unable to accede.

The seizures complained of are not the acts of individuals claiming private rights which can be dealt with only by judicial determination, or which depend upon facts that need to be ascertained by judicial inquiry. They are the acts of the authorities of Canada, who profess to be acting, and in legal effect are acting, under the authority of Her Majesty's Government. In the report of the Canadian minister of marine and fisheries, which is annexed to and adopted as a part of Lord Rosebery's note, it is said:

"The colonial statutes have received the sanction of the British sovereign who, and not the nation, is actually the party with whom the United States made the convention. The officers who are engaged in enforcing the acts of Canada, or the laws of the Empire, are Her Majesty's officers, whether their authority emanates directly from the Queen or from her representative, the governor-general."

The ground upon which the seizures complained of are principally justified is the allegation that the vessels in question were violating the stipulations of the treaty between the United States and Great Britain. This is denied by the United States Government. The facts of the transaction are not seriously in dispute, and, if they were, could be easily ascertained by both Governments without the aid of the judicial tribunals of either, and the question to be determined is the true interpretation of the treaty as understood, and to be administered between the high contracting parties.

The proposition of Her Majesty's Government amounts to this, that before the United States can obtain consideration of their complaint that the Canadian authorities without justification have seized and are proceeding to confiscate American vessels, the result of the proceedings in the Canadian courts, instituted by the captors as the means of the seizures, must be awaited, and the decision of that tribunal on the international questions involved obtained.



The interpretation of a treaty when it becomes the subject of discussion between two governments is not, I respectfully insist, to be settled by the judicial tribunals of either. That would be placing its construction in the hands of one of the parties to it. It can only be interpreted for such a purpose by the mutual consideration and agreement which were necessary to make it. Questions between individuals arising upon the terms of a treaty may be for the courts to which they resort to adjust.

Questions between nations as to national rights secured by treaty are of a very different character and must be solved in another way.

The United States Government is no party to the proceedings instituted by the British authorities in Canada. Nor can it consent to become a party. The proceedings themselves are what the United States complain of as unauthorized, as well as unfriendly. It would be inconsistent with the dignity of a sovereign power to become a party to such proceedings, or to seek redress in any way in the courts of another country for what it claims to be the violation of treaty stipulations by the authorities of that country.

Still less could it consent to be made indirectly a party to the suits by being required to await the result of such defense as the individuals whose property is implicated may be able and may think proper to set up.

Litigation of that sort may be indefinitely prolonged. Meanwhile fresh seizures of American vessels upon similar grounds are to be expected, for which redress would in like manner await the decisions of the local tribunals, whose jurisdiction the captors invoke and the United States Government denies.

Nor need it be again pointed out, how different may be the question involved between the Governments from that which these proceedings raise in the Canadian courts. Courts in such cases do not administer treaties. They administer only the statutes that are passed in pursuance of treaties. If a statute contravene the provisions of a treaty, British courts are nevertheless bound by the statute. And if, on the other hand, there is a treaty stipulation which no statute gives the means of enforcing, the court cannot enforce it.

Although the United States Government insists that there is no British or colonial act authorizing the seizures complained of, if the British courts should nevertheless find such authority in any existing statute, the question whether the statute itself or the construction given it is warranted by the treaty would still remain. And also the still higher question, whether if the strict technical reading of the treaty might be thought to warrant such a result, it is one which ought to be enforced between sovereign and friendly nations acting in the spirit of the treaty.

The United States Government must therefore insist that, irrespective of the future result of the Canadian legal proceedings, the authority and propriety of which is the subject of dispute, and without waiting their conclusion, it is to Her Majesty's Government it must look for redress and satisfaction for the transactions in question, and for such instructions to the colonial authority as will prevent their repetition.

While, as I have observed, Lord Rosebery declines to discuss the question of the legality of these seizures, the able and elaborate report on the subject from the Canadian minister of marine and fisheries,

which is made a part of it, attempts in very general terms to sustain their authority. He says:

"It is claimed that the vessel (the *David J. Adams*) violated the treaty of 1818, and *consequently* the statutes which exist for the enforcement of the treaty."

It is not clear from this language whether it is meant to be asserted that if an act, otherwise lawful, is prohibited by a treaty, the commission of the act becomes a violation of a statute which has no reference to it, if the statute was enacted to carry out the treaty, or whether it is intended to say that there was in existence, prior to the seizure of the vessel in question, some statute which did refer to the act complained of and did authorize proceedings or provide a penalty against American fishing vessels for purchasing bait or supplies in a Canadian port to be used in lawful fishing.

The former proposition does not seem to require refutation. If the latter is intended, I have respectfully to request that your lordship will have the kindness to direct a copy of such act to be furnished to me. I have supposed that none such existed, and neither in the report of the Canadian minister, nor in the customs circulars or warnings thereto appended, in which attention is called to the various legislation on the subject, is any such act pointed out.

The absence of such statute provision either in the act of Parliament (59 Geo. III, c. 38) or in any subsequent colonial act, is not merely a legal objection, though quite a sufficient one, to the validity of the proceedings in question. It affords the most satisfactory evidence that up to the time of the present controversy no such construction has been given to the treaty by the British or by the colonial parliament, as is now sought to be maintained.

No other attempt is made in the report of the Canadian minister to justify the legality of these seizures.

It is apparent from the whole of it that he recognizes the necessity of the proposed enactment of the act of the Canadian Parliament already alluded to in order to sustain them.

This remark is further confirmed by the communication from the Marquis of Lansdowne, governor-general of Canada, to Lord Granville, in reference to that act, annexed by Lord Rosebery to his second note to the British minister of July 23, 1886, a copy of which was sent me by his lordship, in connection with his other note of same date above referred to.

I do not observe upon other points of the minister's report not bearing upon the points of note to Lord Rosebery. So far as they relate to the communications addressed to the British minister by Mr. Bayard, the Secretary of State will doubtless make such reply as may seem to him to be called for.

In various other instances American vessels have been seized or driven away by the provincial authorities when not engaged or proposing to engage in any illegal employment.

Some of these cases are similar to that of the *Adams*, the vessels having been taken possession of for purchasing bait or supplies to be used in lawful fishing, or for alleged technical breach of custom-house regulations, where no harm was either intended or committed, and under circumstances in which for a very long time such regulations have been treated as inapplicable.



In other cases, an arbitrary extension of the three-mile limit fixed by the treaty has been announced so as to include within it portions of the high sea, such as the Bay of Fundy, the Bay of Chaleur, and other similar waters, and American fishermen have been prevented from fishing in those places by threats of seizure. I do not propose at this time to discuss the question of the exact location of that line. But only to protest against its extension in the manner attempted by the provincial authorities.

To two recent instances of interference by Canadian officers with American fishermen, of a somewhat different character, I am specially instructed by my Government to ask your lordship's attention, those of the schooners *Thomas F. Bayard* and *Mascot*.

These vessels were proposing to fish in waters in which the right to fish is expressly secured to Americans by the terms of the treaty of 1818; the former in Bonne Bay, on the northwest coast of Newfoundland, and the latter near the shores of the Magdalen Islands.

For this purpose the *Bayard* attempted to purchase bait in the port of Bonne Bay, having reported at the custom-house and announced its object. The *Mascot* made a similar attempt at Port Amherst in the Magdalen Islands, and also desired to take on board a pilot. Both vessels were refused permission by the authorities to purchase bait, and the *Mascot* to take a pilot, and were notified to leave the ports within twenty-four hours on penalty of seizure. They were therefore compelled to depart, to break up their voyages, and to return home, to their very great loss. I append copies of the affidavits of the masters of these vessels, stating the facts.

Your lordship will observe, upon reference to the treaty, not only that the right to fish in these waters is conferred by it, but that the clause prohibiting entry by American fishermen into Canadian ports, except for certain specified purposes, which is relied on by the Canadian Government in the cases of the *Adams* and of some other vessels, has no application whatever to the ports from which the *Bayard* and the *Mascot* were excluded. The only prohibition in the treaty having reference to those ports is against curing and drying fish there, without leave of the inhabitants, which the vessels excluded had no intention of doing.

The conduct of the provincial officers toward these vessels was therefore not merely unfriendly and injurious, but in clear and plain violation of the terms of the treaty. And I am instructed to say that reparation for the losses sustained by it to the owners of the vessels will be claimed by the United States Government on their behalf as soon as the amount can be accurately ascertained.

It will be observed that interference with American fishing vessels by Canadian authorities is becoming more and more frequent, and more and more flagrant in its disregard of treaty obligations and of the principles of comity and friendly intercourse. The forbearance and moderation of the United States Government in respect to them appear to have been misunderstood and to have been taken advantage of by the provincial government. The course of the United States has been dictated, not only by an anxious desire to preserve friendly relations, but by the full confidence that the interposition of Her Majesty's Government would be such as to put a stop to the trans-

actions complained of, and to afford reparation for what has already taken place. The subject has become one of grave importance, and I earnestly solicit the immediate attention of your lordship to the question it involves, and to the views presented in my former note and in those of the Secretary of State.

The proposal in your lordship's note that a revision of the treaty stipulations bearing upon the subject of the fisheries should be attempted by the Government, upon the basis of mutual concessions is one that under other circumstances would merit and receive serious consideration. Such a revision was desired by the Government of the United States before the present disputes arose, and when there was a reasonable prospect that it might have been carried into effect. Various reasons not within its control now concur to make the present time inopportune for that purpose, and greatly to diminish the hope of a favorable result to such an effort. Not the least of them is the irritation produced in the United States by the course of the Canadian Government, and the belief thereby engendered that a new treaty is attempted to be forced upon the United States Government.

It seems apparent that the questions now presented and the transactions that are the subject of present complaint must be considered and adjusted upon the provisions of the existing treaty, and upon the construction that is to be given to them.

A just construction of these stipulations, and such as would consist with the dignity, the interests, and the friendly relations of the two countries, ought not to be difficult, and can doubtless be arrived at.

As it appears to me very important to these relations that the collisions between the American fishermen and the Canadian officials should terminate, I suggest to your lordship whether an *ad interim* construction of the terms of the existing treaty cannot be reached by mutual understanding of the Governments, to be carried out informally by instructions given on both sides, without prejudice to ultimate claims of either, and terminable at the will of either, by which the conduct of the business can be so regulated for the time being as to prevent disputes and injurious proceedings until a more permanent understanding can be had.

Should this suggestion meet with your lordship's approval, perhaps you may be able to propose an outline for such an arrangement.

I am not prepared nor authorized to present one at this time, but may hereafter be instructed to do so if the effort is thought advisable.

I have, &c.,

E. J. PHELPS.

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*Sir L. West to Mr. Bayard.*

BRITISH LEGATION,  
*Washington, September 17, 1886.*

(Received September 18.)

SIR: With reference to your note of the 30th of July last, calling attention to alleged infractions of the convention of 1818 by the authorities at Bonne Bay, Newfoundland, and at Port Amherst, Magdalen Islands, I have now received instructions from Her Majesty's secretary of state for foreign affairs to inform you of the



steps which have been taken in the matter in consequence of the protest of the United States Government.

On the arrival of your note in London, Her Majesty's secretary of state for the colonies telegraphed to the officers administering the Governments of Canada and Newfoundland calling attention to the cases, and explaining that under the treaty of 1818 United States fishermen have the right to fish off the coasts of the Magdalen Islands and off certain coasts of Newfoundland, and stating that it was presumed that the customs officials in those places had not been instructed in the same way as on other parts of the coast.

On the 25th ultimo the Governments of Canada and Newfoundland were further instructed by dispatches from the colonial office to make full reports on the subject of the complaints in question, and it was recommended that special instructions should be issued to the authorities at those places where the inshore fishery has been granted by the convention of 1818 to the United States fishermen, calling their attention to the provisions of that convention, and warning them that no action contrary thereto may be taken in regard to United States fishing vessels.

I may add that information has been received that the warning notices referred to by you were discontinued in the beginning of August.

I have, &c.,

L. S. SACKVILLE WEST.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, *September 18, 1886.*

(Received September 20.)

SIR: I have the honor to inform you that I am requested by the Earl of Iddesleigh to state to you that immediate inquiry will be made regarding the action of the officer of the Canadian schooner *E. F. Conrad*, in the case of the United States schooner *Golden Hind*, which formed the subject of your note of the 17th ultimo.

I have, &c.,

L. S. SACKVILLE WEST.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,

*Washington, September 23, 1886.*

SIR: I have the honor to bring to your attention an instance which has been brought to my knowledge of an alleged denial of one of the rights guaranteed by the convention of 1818, in the case of an American vessel.

Capt. Joseph E. Graham, of the fishing schooner *A. R. Crittenden*, of Gloucester, Mass., states under oath that on or about the 21st of July last, on a return trip from the open-sea fishing grounds to his home port, and while passing through the Strait of Canso, he stopped at Steep Creek for water. The customs officer at that place told him that if he took in water his vessel would be seized; whereupon he sailed without obtaining the needed supply, and was obliged to put his men on short allowance of water during the passage homeward.

I have the honor to ask that Her Britannic Majesty's Government cause investigation to be made of the reported action of the customs officer at Steep Creek, and if the facts be as stated, that he be promptly rebuked for his unlawful and inhumane conduct in denying to a vessel of a friendly nation a general privilege, which is not only held sacred under the maritime law of nations, but which is expressly confirmed to the fishermen of the United States throughout the Atlantic coasts of British North America by the first article of the convention of 1818.

It does not appear that the *A. R. Crittenden* suffered other damage by this alleged inhospitable treatment, but reserving that point the incident affords an illustration of the vexatious spirit in which the officers of the Dominion of Canada appear to seek to penalize and oppress those fishing vessels of the United States, lawfully engaged in fishing, which from any cause are brought within their reach.

I have, &c.,

T. F. BAYARD.

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*Sir L. West to Mr. Bayard.*

BRITISH LEGATION,

Washington, September 25, 1886. (Received September 27.)

SIR: I have the honor to acknowledge the receipt of your note of the 23d instant requesting that investigation should be made of the reported action of the customs officer at Steep Creek, in the Straits of Canso, in threatening the United States fishing schooner *Crittenden* with seizure if she took in water, and to inform you that I have advised Her Majesty's Government accordingly.

I have, &c.,

L. S. SACKVILLE WEST.

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*Lord Iddesleigh to Mr. Phelps.*

FOREIGN OFFICE, October 11, 1886.

SIR: I have the honor to acknowledge the receipt of your note of the 11th ultimo, on the subject of the Canadian fisheries, and I beg leave to acquaint you that the note is under the careful consideration of Her Majesty's Government and that an answer will be returned as early as possible.

I have, &c.,

IDDESLEIGH.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, October 12, 1886.

(Received October 13.)

SIR: With reference to your note of the 14th June relative to certain warnings alleged to have been given to United States fishing vessels by the subcollector of customs at Canso, I have the honor to inclose to you herewith by instruction from the Earl of Iddesleigh



an extract from an approved report of the Canadian privy council dealing with this question.

I have, &c.,

L. S. SACKVILLE WEST.

[Inclosure.]

*Extract from a certified copy of a report of a committee of the honorable the privy council approved by his excellency the administrator of the Government in council on the 16th August, 1886.*

The committee of the privy council have had under consideration a dispatch dated 15 July, 1886, from the secretary of state for the colonies in which he asks for a report from the Canadian Government on the subject of an inclosed note from Mr. Secretary Bayard to the British minister at Washington relating to certain warnings alleged to have been given to United States fishing vessels by the subcollector of customs at Canso.

Mr. Bayard states:

First. That the masters of the four American fishing vessels of Gloucester, Mass., *Martha C. Bradley*, *Rattler*, *Eliza Boynton*, and *Pioneer*, have severally reported to the consul-general at Halifax, that the subcollector of customs at Canso had warned them to keep outside an imaginary line drawn from a point three miles outside Canso head to a point three miles outside St. Esprit on the Cape Breton coast.

Second. That the same masters also report that they were warned against going inside an imaginary line drawn from a point three miles outside North Cape, in Prince Edward Island, to a point three miles outside East Point on the same island.

Third. That the same authority informed the masters of the vessels referred to that they would not be permitted to enter Bay Chaleur.

The minister of marine and fisheries, to whom the dispatch and inclosures were referred, observes that the instructions issued to collectors of customs authorized them in certain cases to furnish United States fishing vessels with a copy of the circular hereto attached, and which constitutes the only official "warning" collectors of customs are empowered to give. It was to be presumed that the subcollector of customs at Canso, as all other collectors, would carefully follow out the instructions as received, and that therefore no case such as that alleged by Mr. Secretary Bayard would be likely to arise.

The minister states, however, so soon as the dispatch above referred to was received he sent to the subcollector at Canso a copy of the allegations, and requested an immediate reply thereto.

The subcollector, in answer, emphatically denies that he has ordered any American vessel out of any harbor in his district or elsewhere, or that he did anything in the way of warning, except to deliver copies of the official circular above alluded to, and states that he boarded no United States vessel other than the *Annie Jordan* and the *Hereward*, and that neither the *Martha C. Bradley*, *Rattler*, or *Pioneer*, of Gloucester, have, during this season, reported at his port of entry. He, with equal clearness, denies that he has warned any United States fishing vessels to keep outside the line drawn from Cape North to East Point, alluded to by Mr. Secretary Bayard, or that they would not be permitted to enter Bay des Chaleurs.

The minister has every reason to believe the statements made by the subcollector at Canso, and, taking into consideration all the circumstances of the case, is of the opinion that the information which has reached the Secretary of State does not rest upon a trustworthy basis.

With reference to the concluding portion of Mr. Bayard's note, the minister observes that the occasion of the present dispatch, which has to deal mainly with questions of fact, does not render it necessary for him to enter upon any lengthened discussion of the question of headland limits.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, October 19, 1886.

SIR: The *Everett Steele*, a fishing vessel of Gloucester, Mass., in the United States, of which Charles E. Forbes, an American citizen, was master, was about to enter, on the 10th of September, 1886, the harbor of Shelburne, Nova Scotia, to procure water and for shelter during repairs. She was hailed, when entering the harbor, by the Canadian cutter *Terror*, by whose captain, Quigley, her papers were taken and retained. Captain Forbes, on arriving off the town, anchored and went with Captain Quigley to the custom-house, who asked him whether he reported whenever he had come in. Captain Forbes answered that he had reported always, with the exception of a visit on the 25th of March, when he was driven into the lower harbor for shelter by a storm and where he remained only eight hours. The collector did not consider that this made the vessel liable, but Captain Quigley refused to discharge her; said he would keep her until he heard from Ottawa, put her in charge of policemen, and detained her until the next day, when at noon she was discharged by the collector; but a calm having come on she could not get to sea, and by the delay her bait was spoiled and the expected profits of her trip lost.

It is scarcely necessary for me to remind you, in presenting this case to the consideration of your government, that when the northeastern coast of America was wrested from France in a large measure by the valor and enterprise of New England fishermen, they enjoyed, in common with other British subjects, the control of the fisheries with which that coast was enriched, and that by the treaty of peace of 1783, which, as was said by an eminent English judge when treating an analogous question, was a treaty of "separation," this right was expressly affirmed.

It is true that by the treaty of 1818, the United States renounced a portion of its rights in these fisheries, retaining, however, the old prerogatives of visiting the bays and harbors of the British northeastern possessions for the purpose of obtaining wood, water, and shelter, and for objects incidental to those other rights of territoriality so retained and confirmed. What is the nature of these incidental prerogatives, it is not, in considering this case, necessary to discuss. It is enough to say that Captain Forbes entered the harbor of Shelburne to obtain shelter and water, and that he had as much right to be there under the treaty of 1818, confirming in this respect the ancient privileges of American fishermen on those coasts, as he would have had on the high



seas, carrying on, under shelter of the flag of the United States, legitimate commerce. The Government which you so honorably represent has, with its usual candor and magnanimity, conceded that when a merchant vessel of the United States is stopped in time of peace by a British cruiser on the groundless suspicion of being a slave trader, damages are to be paid to this Government not merely to redress the injury suffered, but as an apology for the insult offered to the flag of the United States. But the case now presented to you is a much stronger one than that of a seizure on the high seas of a ship unjustly suspected of being a slaver. When a vessel is seized on the high seas on such a suspicion, its seizure is not on waters where its rights, based on prior and continuous ownership, are guaranteed by the sovereign making the seizure. If in such case the property of the owners is injured, it is, however wrongful the act, a case of rare occurrence, on seas comparatively unfrequented, with consequences not very far reaching; and if a blow is struck at a system of which such vessel is unjustly supposed to be a part, such system is one which the civilized world execrates. But seizures of the character of that which I now present to you have no such features. They are made in waters not only conquered and owned by American fishermen, but for the very purpose for which they were being used by Captain Forbes, guaranteed to them by two successive treaties between the United States and Great Britain.

These fishermen also, I may be permitted to remind you, were engaged in no nefarious trade. They pursue one of the most useful and meritorious of industries. They gather from the seas, without detriment to others, a food which is nutritious and cheap, for the use of an immense population. They belong to a stock of men which contributed before the Revolution most essentially to British victories on the Northeastern Atlantic, and it may not be out of place to say they have shown since that Revolution, when serving in the Navy of the United States, that they have lost none of their ancient valor, hardihood, and devotion to their flag.

The indemnity which the United States has claimed, and which Great Britain has conceded, for the visitation and search of isolated merchantmen seized on remote African seas on unfounded suspicion of being slavers, it cannot do otherwise now than claim, with a gravity which the importance of the issue demands, for its fishermen seized on waters in which they have as much right to traverse for shelter as have the vessels by which they are molested. This shelter, it is important to observe, they will as a class be debarred from if annoyances such as I now submit to you are permitted to be inflicted on them by minor officials of the British Provinces.

Fishermen, as you are aware, have been considered, from the usefulness of their occupation, from their simplicity, from the perils to which they are exposed, and from the small quantity of provisions and protective implements they are able to carry with them, the wards of civilized nations; and it is one of the peculiar glories of Great Britain that she has taken the position—a position now generally accepted—that even in time of war they are not to be the subjects of capture by hostile cruisers. Yet, in defiance of this immunity thus generously awarded by humanity and the laws of nations, the very shelter which they own in these seas, and which is ratified to them by two successive treaties, is to be denied to them, not, I am

confident, by the act of the wise, humane, and magnanimous Government you represent, but by deputies of deputies permitted to pursue, not uninfluenced by local rivalry, these methods of annoyance in fishing waters which our fishermen have as much right to visit on lawful errands as those officials have themselves. For let it be remembered that by annoyances and expulsions such as these the door of shelter is shut to American fishermen as a class.

If a single refusal of that shelter, such as the present, is sustained, it is a refusal of shelter to all fishermen pursuing their tasks on those inhospitable coasts. Fishermen have not funds enough nor outfit enough, nor, I may add, recklessness enough to put into harbors where, perfect as is their title, they meet with such treatment as that suffered by Captain Forbes.

To sanction such treatment, therefore, is to sanction the refusal to the United States fishermen as a body of that shelter to which they are entitled by ancient right, by the law of nations, and by solemn treaty. Nor is this all. That treaty is a part of a system of mutual concessions. As was stated by a most eminent English judge in the case of *Sutton v. Sutton* (1 Myl. & R., 675), which I have already noticed, it was the principle of the treaty of peace, and of the treaties which followed between Great Britain and the United States, that the "subjects of the two parts of the divided Empire should, notwithstanding the separation, be protected in the mutual enjoyment" of the rights those treaties affirmed. If, as I cannot permit myself to believe, Great Britain should refuse to citizens of the United States the enjoyment of the plainest and most undeniable of these rights, the consequences would be so serious that they cannot be contemplated by this Government but with the gravest concern.

I have, &c.,

T. F. BAYARD.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, October 20, 1886.

SIR: Permit me to ask you to draw the attention of your Government to the case set forth in the inclosed affidavit of Murdock Kemp, master of the American fishing vessel *Pearl Nelson*, of Provincetown, Mass., which has been subjected to treatment, by the customs officials at Arichat, Nova Scotia, inconsistent with the international law of ordinary amity and hospitality, and also plainly violative of treaty rights under the convention of 1818 between Great Britain and the United States.

The vessel in question was compelled by stress of weather to seek shelter in the harbor of Arichat, Nova Scotia, and arrived late at night, when the custom-house was closed.

Before the custom-house was opened the next day the captain went there, and after waiting over an hour the collector arrived, and the usual inward report was made and permission asked to land the clothing of a sailor lost overboard, whose family resided in that vicinity.

He was then informed that his vessel was seized for allowing his crew to go ashore the night before *before reporting at the custom-house*.



The cruel irony of this was apparent when the collector knew such report was impossible, and that the landing of the crew was usual and customary, and that no charge of smuggling had been suggested or was possible under the circumstances.

To compel the payment of a fine, or "a deposit" of \$200, which is practically the same in its results, was harsh and unwarranted, and was adding a price and a penalty to the privilege of *shelter* guaranteed to American fishermen by treaty.

This vessel was a fishing vessel, and, although seeking to exercise no commercial privileges, was compelled to pay commercial fees, such as are applicable to trading vessels, but at the same time was not allowed commercial privileges.

I beg you will lose no time in representing the wrong inflicted upon an unoffending citizen of the United States, and procure the adoption of such orders as will restore the money so compelled to be deposited.

I am, sir, &c.,

T. F. BAYARD.

[Inclosure.]

*Schooner Pearl Nelson.*

UNITED STATES OF AMERICA,

*District of Massachusetts:*

I, Murdock Kemp, of Provincetown, in Massachusetts, a citizen of the United States, on my oath do say that I was master and part owner of the schooner *Pearl Nelson*, a vessel of the United States duly licensed ———, 1886, for the fisheries, and holding a permit to touch and trade during the existence of said license.

I further say that the crew of said vessel were shipped on wages at Provincetown and Boston for a fishing voyage to the Grand Banks and return to Provincetown for discharge. Said schooner, with license and permit as aforesaid, sailed May 29, 1886, from Provincetown, and on her passage home touched at Arichat, Cape Breton, driven in there by stress of weather. Sailed by the wind from Bank Quero, and blowing fresh, a heavy sea running, and foggy, made Point Michaux, 9 miles from Arichat. The vessel was deep; her dories floated on deck in her lee waist, wind being about west. I concluded to make a harbor and wait for better weather and wind. I anchored the vessel in Arichat Harbor at 11 p. m., September 7, 1886. I had lost a man on the Grand Banks, named James Sampson, who belonged to Arichat, and I wanted to land his effects if the customs officers would allow me to. Some of my crew belonged in that neighborhood. William Babins, my cook, and nine others of the crew took boats off the deck and went ashore without asking my permission. I saw them, but had never known there was any objection. I had been in this and other British North American ports frequently and witnessed the landing from my own and other vessels' crews, but never before heard such landing was illegal or improper. These men took nothing from the vessel with them, nor carried away anything but the clothes they wore.

From the time I left Provincetown I had been into no port anywhere. Next morning after my arrival in Arichat, at 8½ o'clock, I went ashore to enter at the custom-house, and found it closed. I called at 9 o'clock and it was not open. I went again at 10 o'clock and found the collector opening the office door. I made the regular

inward report to him and requested permission to land the clothes of James Sampson, who had been lost from my vessel on the Grand Banks. He told me he had sent a man for me. After I got there this man came in. The officer was holding my papers and told the man to go back and take charge of the vessel. I asked him why he held my papers; he replied he seized her because I had allowed my men to go ashore before reporting at the custom-house; that all he would tell me was he said he would telegraph to Ottawa and find out what to do with me; and he did telegraph immediately. About 5 o'clock p. m. the collector received an answer, and told me to deposit \$200 and the vessel would be released. The collector would not allow me to land this dead man's clothes until after I had paid the \$200 fine. I gave the clothes to the shopkeeper to give to Sampson's widow or friends. I came out of Arichat about 11 a. m. on the 8th of September, 1886, having bought there one bushel of potatoes with the collector's permission, and arrived at Provincetown September 14, 1886. I sailed from Arichat with all my crew on board, and had not at any time intended to leave any of my crew at that port. They were hired men, shipped to be discharged on return at Provincetown, and on our arrival there were all paid off and discharged.

Some of the crew that went ashore at Arichat returned aboard as early as 7 o'clock and all were aboard about the time the vessel was seized. I gave them no money there and had none myself. I further say I did not enter Arichat with any intention of violating any law of the Dominion of Canada, nor for any business, but solely because of the stress of weather that had driven me there. It was mere kindness only that prompted me to offer to land Sampson's clothes there where his friends could get them. There was no profit to the vessel, crew, or myself expected in so doing, or attempted to be gained in entering the port of Arichat other than shelter from the stress of weather we had been under from Quero Bank. If any revenue law of Canada was violated by my vessel or by myself, the same was done through ignorance and inadvertence and not with any intention to defraud the revenue or offend the laws.

MURDOCK KEMP.

Personally appeared before me Murdock Kemp, at Provincetown, State of Massachusetts, U. S. A., this 27th day of September, 1886, who subscribed and made oath to the foregoing.

[SEAL.]

JAMES GIFFORD,  
Notary Public.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, October 21, 1886.

(Received October 22.)

SIR: I have the honor to acknowledge the receipt of your notes of the 19th and 20th instant, requesting me to draw the attention of Her Majesty's Government to the proceedings of the Canadian authorities in the cases of the United States fishing vessels *Everett Steele* and *Pearl Nelson*, and to inform you that I have lost no time in communicating copies of those documents to the Earl of Iddesleigh.

I have, &c.,

L. S. SACKVILLE WEST.



*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
*Washington, October 27, 1886.*

SIR: I inclose copies of two letters received at this Department from George Steele, president of the American Fishery Union at Gloucester, Mass.

The object of these letters is to obtain authentic information of the administration of Canadian laws regulating the sale and exportation of fresh herring from Grand Manan Island and its vicinity, a trade which, the writer avers, has been carried on almost exclusively in American vessels for many years.

By the statements of the letter of Mr. Steele dated October 25, it appears that although the vessels employed in this trade are duly registered in their home port as fishing vessels, yet that so far as the proposed trade is concerned, they are not manned nor equipped, nor in any way prepared for taking fish, but their use is confined to the carriage of fish as merchandise to ports in the United States, a commercial transaction *pur et simple*.

May I ask the favor of an early response to the inquiries propounded by Mr. Steele?

I have, &c.,

T. F. BAYARD.

[Inclosure No. 1.]

*Mr. Steele to Mr. Bayard.*

GLOUCESTER, MASS., *October 18, 1886.*

(Received October 20.)

SIR: The season is approaching when American vessels have been accustomed to buy herring at the Grand Manan Island and vicinity, and bring them to Boston, Gloucester, New York, and Philadelphia.

The present position of the Dominion Government as to that trade concerns our interests greatly, and the fish trade desire to be informed whether that Government now considers the purchase of herring as open to American vessels, either when registered or licensed, with permit to trade.

We do not wish to explore their power of seizing or detaining these vessels, or of inflicting fines. If they object to our vessels continuing in that business, we prefer to keep away from those shores until the Dominion Government is better advised.

I apply to you for this information, which our merchants need, because I know of no other mode of obtaining it in a reliable shape.

I am, &c.,

GEO. STEELE,  
*President American Fishery Union.*

P. S.—This trade in winter herring has been carried on in our vessels almost exclusively for many years, and fifty or a hundred cargoes come in usually during the fall, winter, and spring.

They are largely consumed as food, and to some extent used as bait in our winter fishing to Georges and the Banks.

It is very rare for a British vessel to bring herring to our ports.

[Inclosure No. 2.]

*Mr. Steele to Mr. Bayard.*GLOUCESTER, MASS., *October 25, 1886.*

(Received October 27.)

SIR: I have the pleasure to acknowledge the receipt of your letter dated October 20.

My original inquiry referred both to vessels under license and to those sailing under a register. Your letter satisfies the inquiry as to those licensed for the fisheries.

We still desire to be informed as to whether vessels under registry of the United States will be allowed to enter at Grand Manan and other ports, and load and export herring to the United States.

Such vessels will be manned by a sailing crew, on wages, and not by a fishing complement of sharemen, nor will they carry the fishing gear which such vessels use when fishing under a fishing license.

The fishing interests, I assure you, appreciate the courtesy of your offer to procure this information seasonably for them.

I remain, &c.,

GEO. STEELE,  
*President of the American Fishery Union.*

*Sir L. West to Mr. Bayard.*WASHINGTON, *November 1, 1886.*

(Received November 2.)

SIR: With reference to your note of the 9th of August last, respecting the treatment of the United States fishing boat *Rattler* by the Canadian authorities, I have the honor to inclose to you herewith, in obedience to the instructions of the Earl of Iddesleigh, copy of a dispatch from the administrator of the Government of Canada together with copy of the report of the collector of customs at Shelburne.

I have, &c.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.]

HALIFAX, NOVA SCOTIA, *September 21, 1886.*

SIR: I have the honor to inclose herewith a certified copy of a minute of my privy council embodying a report of the minister of customs in relation to the alleged improper treatment of the United States fishing schooner *Rattler* in being required to report to the collector of customs at Shelburne, Nova Scotia, when seeking that harbor for shelter.

The reply of the collector to the inquiries addressed to him in respect to this matter is appended to the minister's report, and in it the facts of the case as set forth in my telegram of the 14th instant, are given.

I have communicated your dispatch No. 195 of the 1st inst. forwarding Mr. Bayard's protest concerning this case to my ministers and requested to be furnished with a report thereon, which I shall forward for your information as soon as it has been received.

I have, &c.,

A. G. RUSSELL, *General.*



[Inclosure No. 2.]

CUSTOM-HOUSE, *Shelburne, September 6, 1886.*

SIR: I have to acknowledge receipt of your telegram of 4th instant, relative to schooner *Rattler*, and I wired an answer this morning, as requested on the morning of the 4th ultimo. Chief officer of *Terror*, accompanied by Capt. A. F. Cunningham, called at this office. Captain Cunningham reported his vessel inwards as follows, viz: Schooner *Rattler* of Gloucester, 93 tons register; 16 men from fishing bank, with 465 barrels mackerel came in for shelter. I was afterwards informed by the officers of cutter that they found the schooner the evening before at anchor off Sandy Point, 5 miles down the harbor, two men from cutter were put on board, and the master required to report at customs in the morning. I was also informed that the master, Captain Cunningham, made an attempt to put to sea in the night, by hoisting sails, weighing anchor, &c., but was stopped by officers from cutter.

I am, &amp;c.,

W. W. ATTWOOD, *Collector.*The COMMISSIONER OF CUSTOMS, *Ottawa.*

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Mr. Bayard to Mr. Phelps.

No. 452.]

DEPARTMENT OF STATE,  
*Washington, November 6, 1886.*

SIR: On October 7, 1886, the United States fishing vessel, the *Marion Grimes*, of Gloucester, Mass., Alexander Landry, a citizen of the United States, being her captain, arrived shortly before midnight, under stress of weather, at the outer harbor of Shelburne, Nova Scotia. The night was stormy, with a strong head-wind against her, and her sole object was temporary shelter. She remained at the spot where she anchored, which was about seven miles from the port of Shelburne, no one leaving her until 6 o'clock the next morning, when she hoisted sail in order to put to sea. She had scarcely started, however, before she was arrested and boarded by a boat's crew from the Canadian cruiser *Terror*. Captain Landry was compelled to proceed to Shelburne, about seven miles distant, to report to the collector. When the report was made, Captain Landry was informed that he was fined \$400 for not reporting on the previous night. He answered that the custom-house was not open during the time that he was in the outer harbor. He further insisted that it was obvious from the storm that caused him to take shelter in that harbor, from the shortness of his stay, and from the circumstances that his equipments were exclusively for deep-sea fishing, and that he had made no effort whatever to approach the shore, that his object was exclusively to find shelter. The fine, however, being imposed principally through the urgency of Captain Quigley, commanding the *Terror*, Captain Landry was informed that he was to be detained at the port of Shelburne until a deposit to meet the fine was made. He consulted Mr. White, the United States consular agent at Shelburne, who at once telegraphed the facts to Mr. Phelan, United States consul-general at Halifax, it being of great importance to Captain Landry, and to those

interested in his venture, that he should proceed on his voyage at once. Mr. Phelan then telegraphed to the assistant commissioner of customs at Ottawa that it was impossible for Captain Landry to have reported while he was in the outer harbor on the 8th instant, and asking that the deposit required to release the vessel be reduced. He was told in reply that the minister declined to reduce the deposit, but that it might be made at Halifax. Mr. Phelan at once deposited at Halifax the \$400, and telegraphed to Captain Landry that he was at liberty to go to sea. On the evening of October 11 Mr. Phelan received a telegram from Captain Landry, who had already been kept four days in the port, stating that "the custom-house officers and Captain Quigley" refused to let him go to sea. Mr. Phelan the next morning called on the collector at Halifax to ascertain if an order had issued to release the vessel, and was informed that the order had been given, "but that the collector and captain of the cruiser refused to obey it, for the reason that the captain of the seized vessel hoisted the American flag while she was in custody of Canadian officials." Mr. Phelan at once telegraphed this state of facts to the assistant commissioner at Ottawa, and received in reply, under date of August 12, the announcement that "collector has been instructed to release the *Grimes* from customs seizure. This department has nothing to do with other charges." On the same day a dispatch from the commissioner of customs at Ottawa was sent to the collector of customs at Halifax reciting the order to release the *Grimes*, and saying "this [the customs] department has nothing to do with other charges. It is department of marine."

The facts as to the flag were as follows:

On October 11, the *Marion Grimes*, being then under arrest by order of local officials for not immediately reporting at the custom-house, hoisted the American flag. Captain Quigley, who, representing, as appeared, not the revenue, but the marine department of the Canadian administration, was, with his "cruiser," keeping guard over the vessel, ordered the flag to be hauled down. This order was obeyed; but about an hour afterwards the flag was again hoisted, whereupon Captain Quigley boarded the vessel with an armed crew and lowered the flag himself. The vessel was finally released under orders of the customs department, being compelled to pay \$8 costs in addition to the deposit of \$400 above specified.

The seriousness of the damage inflicted on Captain Landry and those interested in his venture will be understood when it is considered that he had a crew of twelve men, with full supplies of bait, which his detention spoiled.

You will at once see that the grievances I have narrated fall under two distinct heads.

The first concerns the boarding by Captain Quigley of the *Marion Grimes* on the morning of October 8th, and compelling her to go to the town of Shelburne, there subjecting her to a fine of \$400 for visiting the port without reporting, and detaining her there arbitrarily four days, a portion of which time was after a deposit to meet the fine had been made.

This particular wrong I now proceed to consider with none the less gravity, because other outrages of the same class have been perpetrated by Captain Quigley. On August 18th last I had occasion, as you will see by the annexed papers, to bring to the notice of the British minister at this capital several instances of aggression on the part of



Captain Quigley on our fishing vessels. On October 19, 1886, I had also to bring to the British minister's notice the fact that Captain Quigley had, on September the 10th, arbitrarily arrested the *Everett Steele*, a United States fishing vessel, at the outer port of Shelburne. To these notes I have received no reply. Copies are transmitted, with the accompanying papers, to you in connection with the present instruction, so that the cases, as part of a class, can be presented by you to Her Majesty's Government.

Were there no treaty relations whatever between the United States and Great Britain, were the United States fishermen without any other right to visit those coasts than are possessed by the fishing craft of any foreign country simply as such, the arrest and boarding of the *Grimes*, as above detailed, followed by forcing her into the port of Shelburne, there subjecting her to fine for not reporting, and detaining her until her bait and ice were spoiled, are wrongs which I am sure Her Majesty's Government will be prompt to redress. No Governments have been more earnest and resolute in insisting that vessels driven by stress of weather into foreign harbors should not be subject to port exactions than the Governments of Great Britain and the United States. So far has this solicitude been carried that both Governments, from motives of humanity, as well as of interest as leading maritime powers, have adopted many measures by which foreigners as well as citizens or subjects arriving within their territorial waters may be protected from the perils of the sea. For this purpose not merely light-houses and light-ships are placed by us at points of danger, but an elaborate life-saving service, well equipped with men, boats, and appliances for relief, studs our seaboard in order to render aid to vessels in distress, without regard to their nationality. Other benevolent organizations are sanctioned by Government which bestow rewards on those who hazard their lives in the protection of life and property in vessels seeking in our waters refuge from storms. Acting in this spirit the Government of the United States has been zealous, not merely in opening its ports freely, without charges to vessels seeking them in storm, but in insisting that its own vessels, seeking foreign ports under such circumstances, and exclusively for such shelter, are not under the law of nations subject to custom-house exactions.

"In cases of vessels carried into British ports by violence or stress of weather [said Mr. Webster in instructions to Mr. Everett, June 28, 1842] we insist that there shall be no interference from the land with the relation or personal condition of those on board, according to the laws of their own country; that vessels under such circumstances shall enjoy the common laws of hospitality, subjected to no force, entitled to have their immediate wants and necessities relieved, and to pursue their voyage without molestation."

In this case, that of the *Creole*, Mr. Wheaton, in the *Revue Française et Étrangère* (IX, 345), and Mr. Légaré (4 Op. At. Gen., 98), both eminent publicists, gave opinions that a vessel carried by stress of weather or forced into a foreign port is not subject to the law of such port; and this was sustained by Mr. Bates, the umpire of the commission to whom the claim was referred (Rep. Com. of 1853, 244, 245):

"The municipal law of England [so he said] cannot authorize a magistrate to violate the law of nations by invading with an armed

force the vessel of a friendly nation that has committed no offense, and forcibly dissolving the relations which, by the laws of his country, the captain is bound to preserve and enforce on board. These rights, sanctioned by the law of nations, viz, the right to navigate the ocean and to seek shelter in case of distress or other unavoidable circumstances, and to retain over the ship, her cargo, and passengers, the law of her country, must be respected by all nations, for no independent nation would submit to their violation."

It is proper to state that Lord Ashburton, who conducted the controversy in its diplomatic stage on the British side, did not deny as a general rule the propositions of Mr. Webster. He merely questioned the applicability of the rule to the case of the *Creole*. Nor has the principle ever been doubted by either Her Majesty's Government or the Government of the United States; while, in cases of vessels driven by storm on inhospitable coasts, both Governments have asserted it, sometimes by extreme measures of redress, to secure indemnity for vessels suffering under such circumstances from port exactions, or from injuries inflicted from the shore.

It would be hard to conceive of anything more in conflict with the humane policy of Great Britain in this respect, as well as with the law of nations, than was the conduct of Captain Quigley towards the vessel in question on the morning of October 8th.

In such coasts, at early dawn, after a stormy night, it is not unusual for boats, on errands of relief, to visit vessels which have been struggling with storm during the night. But in no such errand of mercy was Captain Quigley engaged. The *Marion Grimes*, having found shelter during the night's storm, was about to depart on her voyage, losing no time while her bait was fresh and her ice lasted, when she was boarded by an armed crew, forced to go 7 miles out of her way to the port, and was there under pressure of Captain Quigley, against the opinion originally expressed of the collector, subjected to a fine of \$400 with costs, and detained there, as I shall notice hereafter, until her voyage was substantially broken up. I am confident Her Majesty's Government will concur with me in the opinion that, as a question of international law, aside from treaty and other rights, the arrest and detention under the circumstances of Captain Landry and of his vessel were in violation of the law of nations as well as the law of humanity, and that on this ground alone the fine and the costs should be refunded and the parties suffering be indemnified for their losses thereby incurred.

It is not irrelevant, on such an issue as the present, to inquire into the official position of Captain Quigley, "of the Canadian cruiser *Terror*." He was, as the term "Canadian cruiser" used by him enables us to conclude, not an officer in Her Majesty's distinctive service. He was not the commander of a revenue cutter, for the head of the customs service disavowed him. Yet he was arresting and boarding, in defiance of law, a vessel there seeking shelter, over-influencing the collector of the port into the imposition of a fine, hauling down with his own hand the flag of the United States, which was displayed over the vessel, and enforcing arbitrarily an additional period of detention after the deposit had been made, simply because the captain of the vessel refused to obey him by executing an order insulting to the flag which the vessel bore. If armed cruisers are employed in seizing, harassing, and humiliating storm-bound vessels of the United



States on Canadian coasts, breaking up their voyages and mulcting them with fines and costs, it is important for reasons presently to be specified that this Government should be advised of the fact.

From Her Majesty's Government redress is asked. And that redress, as I shall have occasion to say hereafter, is not merely the indemnification of the parties suffering by Captain Quigley's actions, but his withdrawal from the waters where the outrages I represent to you have been committed.

I have already said that the claims thus presented could be abundantly sustained by the law of nations, aside from treaty and other rights. But I am not willing to rest the case on the law of nations. It is essential that the issue between United States fishing vessels and the "*cruiser Terror*" should be examined in all its bearings, and settled in regard not merely to the general law of nations, but to the particular rights of the parties aggrieved.

It is a fact that the fishing vessel *Marion Grimes* had as much right under the special relations of Great Britain and the United States to enter the harbor of Shelburne as had the Canadian cruiser. The fact that the *Grimes* was liable to penalties for the abuse of such right of entrance does not disprove its existence. Captain Quigley is certainly liable to penalties for his misconduct on the occasion referred to. Captain Landry was not guilty of misconduct in entering and seeking to leave that harbor, and had abused no privilege. But whether liable or no for subsequent abuse of the rights, I maintain that the right of free entrance into that port, to obtain shelter, and whatever is incident thereto, belonged as much to the American fishing vessel as to the Canadian cruiser.

The basis of this right is thus declared by an eminent jurist and statesman, Mr. R. R. Livingston, the first Secretary of State appointed by the Continental Congress, in instructions issued on January 7, 1782, to Dr. Franklin, then at Paris, intrusted by the United States with the negotiation of articles of peace with Great Britain:

"The arguments on which the people of America found their claim to fish on the banks of Newfoundland arise, first, from their having once formed a part of the British Empire, in which state they always enjoyed as fully as the people of Britain themselves the right of fishing on those banks. They have shared in all the wars for the extension of that right, and Britain could with no more justice have excluded them from the enjoyment of it (even supposing that one nation could possess it to the exclusion of another) while they formed a part of that Empire than they could exclude the people of London or Bristol. If so, the only inquiry is, how have we lost this right? If we were tenants in common with Great Britain while united with her, we still continue so, unless by our own act we have relinquished our title. Had we parted with mutual consent, we should doubtless have made partition of our common rights by treaty. But the oppressions of Great Britain forced us to a separation (which must be admitted, or we have no right to be independent); and it can not certainly be contended that those oppressions abridged our rights or gave new ones to Britain. Our rights, then, are not invalidated by this separation, more particularly as we have kept up our claim from the commencement of the war, and assigned the attempt of Great Britain to exclude us from the fisheries, as one of the causes of our recurring to arms."

As I had occasion to show in my note to the British minister in the case of the *Everett Steele*, of which a copy is hereto annexed, this "tenancy in common," held by citizens of the United States in the fisheries, they were to "continue to enjoy" under the preliminary articles of 1782, as well as under the treaty of peace of 1783; and this right, as a right of entrance in those waters, was reserved to them, though with certain limitations in its use, by the treaty of 1818. I might here content myself with noticing that the treaty of 1818, herein reciting a principle of the law of nations as well as ratifying a right previously possessed by fishermen of the United States, expressly recognizes the right of these fishermen to enter the "bays or harbors" of Her Majesty's Canadian dominions, "for the purpose of shelter and of repairing damages therein." The extent of other recognitions of rights in the same clause need not here be discussed. At present it is sufficient to say that the placing an armed cruiser at the mouth of a harbor in which the United States fishing vessels are accustomed and are entitled to seek shelter on their voyages, such cruiser being authorized to arrest and board our fishing vessels seeking such shelter, is an infraction not merely of the law of nations, but of a solemn treaty stipulation. That, so far as concerns the fishermen so affected, its consequences are far-reaching and destructive, it is not necessary here to argue. Fishing vessels only carry provisions enough for each particular voyage. If they are detained several days on their way to the fishing banks the venture is broken up. The arrest and detention of one or two operates upon all. They cannot as a class, with their limited capital and resources, afford to run risks so ruinous. Hence, rather than subject themselves to even the chances of suffering the wrongs inflicted by Captain Quigley, "of the Canadian cruiser *Terror*," on some of their associates, they might prefer to abandon their just claim to the shelter consecrated to them alike by humanity, ancient title, the law of nations, and by treaty, and face the gravest peril and the wildest seas in order to reach their fishing grounds. You will therefore represent to Her Majesty's Government that the placing Captain Quigley in the harbor of Shelburne to inflict wrongs and humiliation on United States fishermen there seeking shelter is, in connection with other methods of annoyance and injury, expelling United States fishermen from waters, access to which, of great importance in the pursuit of their trade, is pledged to them by Great Britain, not merely as an ancient right, but as part of a system of international settlement.

It is impossible to consider such a state of things without grave anxiety. You can scarcely represent this too strongly to Her Majesty's Government.

It must be remembered, in considering this system, so imperiled, that the preliminaries to the article of 1782, afterwards adopted as the treaty of 1783, were negotiated at Paris by Dr. Franklin, representing the United States, and Mr. Richard Oswald, representing Lord Shelburne, then colonial secretary, and afterwards, when the treaty was finally agreed on, prime minister. It must be remembered, also, that Lord Shelburne, while maintaining the rights of the colonies when assailed by Great Britain, was nevertheless unwilling that their independence should be recognized prior to the treaty of peace, as if it were a concession wrung from Great Britain by the



exigencies of war. His position was that this recognition should form part of a treaty of partition, by which, as is stated by the court in *Sutton v. Sutton* (1 Rus. & M., 675), already noticed by me, the two great sections of the British Empire agreed to separate, in their articles of separation recognizing to each other's citizens or subjects certain territorial rights. Thus the continuance of the rights of the United States in the fisheries was recognized and guaranteed; and it was also declared that the navigation of the Mississippi, whose sources were, in the imperfect condition of geographical knowledge of that day, supposed to be in British territory, should be free and open to British subjects and to citizens of the United States. Both powers also agreed that there should be no further prosecutions or confiscations based on the war; and in this way were secured the titles to property held in one country by persons remaining loyal to the other. This was afterwards put in definite shape by the following article (Article X) of Jay's treaty:

"It is agreed that British subjects who now hold lands in the territories of the United States, and American citizens who now hold lands in the dominion of His Majesty, shall continue to hold them according to the nature and tenure of their respective estates and titles therein, and may grant, sell, or devise the same to whom they please in like manner as if they were natives; and that neither they nor their heirs or assigns shall, so far as may respect the said lands and the legal remedies incident thereto, be regarded as aliens."

It was this article which the court in *Sutton v. Sutton*, above referred to, held to be one of the incidents of the "separation" of 1783, of perpetual obligation, unless rescinded by the parties, and hence not abrogated by the war of 1812.

It is not, however, on the continuousness of the reciprocities, recognized by the treaty of 1783, that I desire now to dwell. What I am anxious you should now impress upon the British Government is the fact that, as the fishery clause in this treaty, a clause continued in the treaty of 1818, was a part of a system of reciprocal recognitions which are interdependent, the abrogation of this clause, not by consent, but by acts of violence and of insult, such as those of the Canadian cruiser *Terror*, would be fraught with consequences which I am sure could not be contemplated by the Governments of the United States and Great Britain without immediate action being taken to avert them. To the extent of the system thus assailed I now direct attention.

When Lord Shelburne and Dr. Franklin negotiated the treaty of peace, the area on which its recognitions were to operate was limited. They covered, on the one hand, the fisheries; but the map of Canada in those days, as studied by Lord Shelburne, gives but a very imperfect idea of the territory near which the fisheries lay. Halifax was the only port of entry on the coast; the New England States were there and the other nine were provinces, but no organized governments to the west of them. It was on this area only, as well as on Great Britain, that the recognitions and guarantees of the treaty were at first to operate. Yet comparatively small as this field may now seem, it was to the preservation over it of certain reciprocal rights that the attention of the negotiators was mainly given. And the chief of these rights were: (1) the fisheries, a common enjoy-

ment in which by both parties took nothing from the property of either; and (2) the preservation to the citizens or subjects of each country of title to property in the other.

Since Lord Shelburne's premiership this system of reciprocity and mutual convenience has progressed under the treaties of 1842 and 1846, so as to give to Her Majesty's subjects, as well as to citizens of the United States, the free use of the river Detroit or both sides of the island Bois Blanc, and between that island and the American and Canadian shores, and all the several channels and passages between the various islands lying near the junction of the river St. Clair with the lake of that name. By the treaty of 1846 the principle of common border privileges was extended to the Pacific Ocean. The still existing commercial articles of the treaty of 1871 further amplified those mutual benefits by embracing the use of the inland waterways of either country, and defining enlarged privileges of bonded transit by land and water through the United States for the benefit of the inhabitants of the Dominion. And not only by treaties has the development of Her Majesty's American dominion, especially to the westward, been aided by the United States, but the vigorous contemporaneous growth under the enterprise and energy of citizens of the Northwestern States and Territories of the United States has been productive of almost equal advantages to the adjacent possessions of the British Crown, and the favoring legislation by Congress has created benefits in the way of railway facilities which under the sanction of State laws have been and are freely and beneficially enjoyed by the inhabitants of the Dominion and their Government.

Under this system of energetic and co-operative development the coast of the Pacific has been reached by the transcontinental lines of railway within the territorial limits of the respective countries, and, as I have stated, the United States being the pioneers in this remarkable progress, have been happily able to anticipate and incidentally to promote the subsequent success of their neighbors in British America.

It will be scarcely necessary for you to say to Lord Iddesleigh that the United States, in thus aiding in the promotion of the prosperity, and in establishing the security of Her Majesty's Canadian dominions, claims no particular credit. It was prompted, in thus opening its territory to Canadian use, and incidentally for Canadian growth, in large measure by the consciousness that such good offices are part of a system of mutual convenience and advantage growing up under the treaties of peace and assisted by the natural forces of friendly contiguity. Therefore it is that we witness with surprise and painful apprehension the United States fishermen hampered in their enjoyment of their undoubted rights in the fisheries.

The hospitalities of Canadian coasts and harbors, which are ours by ancient right, and which these treaties confirm, cost Canada nothing and are productive of advantage to her people. Yet, in defiance of the most solemn obligations, in utter disregard of the facilities and assistances granted by the United States, and in a way especially irritating, a deliberate plan of annoyances and aggressions has been instituted and plainly exhibited during the last fishing season—a plan calculated to drive these fishermen from shores where, without injury to others, they prosecute their own legitimate and useful industry.



It is impossible not to see that if the unfriendly and unjust system, of which the cases now presented are part, is sustained by Her Majesty's Government, serious results will almost necessarily ensue, great as is the desire of this Government to maintain the relations of good neighborhood. Unless Her Majesty's Government shall effectually check these aggressions a general conviction on the part of the people of the United States may naturally be apprehended that, as treaty stipulations in behalf of our fishermen, based on their ancient rights, cease to be respected, the maintenance of the comprehensive system of mutual commercial accommodation between Canada and the United States could not reasonably be expected.

In contemplation of so unhappy and undesirable a condition of affairs I express the earnest hope that Her Majesty's Government will take immediate measures to avert its possibility.

With no other purpose than the preservation of peace and good will and the promotion of international amity, I ask you to represent to the statesmen charged with the administration of Her Majesty's Government the necessity of putting an end to the action of Canadian officials in excluding American fishermen from the enjoyment of their treaty rights in the harbors and waters of the maritime provinces of British North America.

The action of Captain Quigley in hauling down the flag of the United States from the *Marion Grimes* has naturally aroused much resentment in this country, and has been made the subject of somewhat excited popular comment; and it is wholly impossible to account for so extraordinary and unwarranted an exhibition of hostility and disrespect by that official. I must suppose that only his want of knowledge of what is due to international comity and propriety and overheated zeal as an officer of police could have permitted such action; but I am confident that, upon the facts being made known by you to Her Majesty's Government, it will at once be disavowed, a fitting rebuke be administered, and the possibility of a repetition of Captain Quigley's offense be prevented.

It seems hardly necessary to say that it is not until after condemnation by a prize court that the national flag of a vessel seized as a prize of war is hauled down by her captor. Under the fourteenth section of the twentieth chapter of the Navy Regulations of the United States the rule in such cases is laid down as follows:

"A neutral vessel, seized, is to wear the flag of her own country until she is adjudged to be a lawful prize by a competent court."

But, *a fortiori*, is this principle to apply in cases of customs seizures, where fines only are imposed and where no belligerency whatever exists. In the port of New York, and other of the countless harbors of the United States, are merchant vessels to-day flying the British flag which from time to time are liable to penalties for violations of customs laws and regulations. But I have yet to learn that any official assuming, directly or indirectly, to represent the Government of the United States, would under such circumstances order down or forcibly haul down the British flag from a vessel charged with such irregularity; and I now assert that if such act were committed, this Government, after being informed of it, would not wait for a complaint from Great Britain, but would at once promptly reprimand the parties concerned in such misconduct and would cause proper expression of regret to be made.

A scrupulous regard for international respect and courtesy should mark the intercourse of the officials of these two great and friendly nations, and anything savoring of the contrary should be unhesitatingly and emphatically rebuked. I cannot doubt that these views will find ready acquiescence from those charged with the administration of the Government of Great Britain.

You are at liberty to make Lord Iddesleigh acquainted with the contents of this letter, and, if desired, leave with him a copy.

I am, sir, your obedient servant,

T. F. BAYARD.

EDWARD J. PHELPS, Esq., &c.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, November 9, 1886.

(Received November 10.)

SIR: With reference to your note of the 16th of July last protesting against the action of Captain Kent of the Canadian cruiser *General Middleton* in expelling Stephen R. Balkam from the harbor of St. Andrews, New Brunswick, I have the honor to communicate to you herewith, in accordance with the instructions of the Earl of Iddesleigh, and in reply to your above-mentioned note, copy of a certified report of the privy council for Canada upon the subject.

I have, &c.,

L. S. SACKVILLE WEST.

[Inclosure.]

*Certified copy of a report of a committee of the honorable the privy council for Canada, approved by his excellency the administrator of the Government in council on the 21st September, 1886.*

The committee of the privy council have had under their consideration a dispatch dated 5th August, 1886, from the right honorable the secretary of state for the colonies, transmitting a copy of a letter from the foreign office with a copy of a note from Mr. Bayard, and protesting against the action of Captain Kent, of the Dominion cruiser *General Middleton*, in refusing Stephen A. Balkam permission to buy fish from Canadians.

The minister of marine and fisheries, to whom the dispatch and inclosures were referred, submits the following report from the first officer of the *General Middleton*:

“HALIFAX, August 25, 1886.

“I have the honor to state that when boarding several boats in St. Andrews Bay I asked Stephen R. Balkam if the boat he was in was American. He replied that he thought she was. I informed him that if she was American he could not take fish from the weirs on the English side without a permit from the collector of customs at St. Andrews or West Isles.

“He asked permission to take the fish from the weirs in Kelly's Cove without a permit. I declined to accede to his request.

“Mr. Balkam went around the point in his boat, and, after accosting several others, I met him again, evidently trying to evade my in-



structions. I told him that he must not take the fish without permission from the customs. He left for the American shore and I returned to the *Middleton*.

"Mr. Stephen R. Balkam I have known for some years. He formerly belonged to St. Andrews, but is now living in Eastport. His business is to carry sardines from the English side to Eastport for canning purposes."

The minister is of opinion, in view of the above, that in warning Mr. Balkam that if his boat belonged to the United States he could not take herring from the weirs without first having reported at the custom-house, Mr. Kent acted within the scope of the law and his instructions.

The committee respectfully advise that your excellency be moved to transmit a copy of this minute to the right honorable the secretary of state for the colonies, as requested in his dispatch of the 5th August last.

JOHN J. MCGEE,  
*Clerk, Privy Council, Canada.*

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
*Washington, November 11, 1886.*

SIR: I have the honor to inclose herewith copies of the statements with affidavits from Capt. Medeo Rose, master of the schooner *Laura Sayward*, of Gloucester, Mass., and of Capt. Joseph Tupper, master of the schooner *Jeannie Seaverns*, also of Gloucester, forwarded to me by the collector of the port of Gloucester, under date of 5th instant.

The first impressively describes the inhospitable and inhuman conduct of the collector of the port of Shelburne, Nova Scotia, in refusing to allow Captain Rose to buy sufficient food for himself and crew to take them home, besides unnecessarily retaining his papers, and thus preventing him, with a wholly inadequate supply of provisions, from proceeding on his voyage.

The second complaint is of Captain Quigley, commanding the Canadian cruiser *Terror*, in not only preventing Captain Tupper from landing to visit his relatives in Liverpool, Nova Scotia, but even forbidding his relatives from coming on board his vessel to see him, and likewise placing a guard on board of her to insure that result.

While I need not comment further than I have already done in previous notes on the unjust and unwarrantable acts of the Dominion officials of late towards our fishermen, of which the instances now presented are but repetitions, I must notice the new phase of Captain Quigley's abuse of authority in actually making Captain Tupper a prisoner on board of his own vessel, and in preventing his relatives, whom he states he had not seen for many years, from meeting him.

Such conduct, apart from all its legal and international aspects, is wholly unworthy of any one intrusted with the execution of a public duty and inconsistent with the national reputation for humanity and courtesy of an officer in Her Majesty's service.

I have, &c.,

T. F. BAYARD.

[Inclosure No. 1.]

*Mr. Presson to Mr. Bayard.*

GLOUCESTER, MASS.,  
*Collector's Office, November 5, 1886.*

SIR: I transmit herewith, by request, affidavits of Capt. Medeo Rose, of schooner *Laura Sayward*, and Capt. Joseph Tupper, of schooner *Jeannie Seaverns*, in relation to their treatment by Canadian officials.

I am, &c.,

D. S. PRESSON, *Collector.*

[Sub-inclosure 1.]

*Affidavit of Captain Rose, of the schooner Laura Sayward.*

I, Medeo Rose, master of schooner *Laura Sayward*, of Gloucester, being duly sworn, do depose and say: That on Saturday, October 2d, being then on Western Bank on a fishing trip, and being short of provisions, we hove up our anchor and started for home. The wind was blowing almost a gale from the northwest, and being almost dead-ahead we made slow progress on our voyage home. On Tuesday, October 5th, we made Shelburne, Nova Scotia, and arrived in that harbor about 8 p. m. on that day, short of provisions, water, and oil to burn. On Wednesday I sailed for the inner harbor of Shelburne. Arriving at the town about 4 p. m., on going ashore I found the custom-house closed, and hunted up the collector and entered my vessel, and asked permission from him to buy 7 pounds sugar, 3 pounds coffee, one-half to 1 bushel potatoes, and 2 pounds of butter, or lard or pork, and oil enough to last us home, and was refused. I stated to him my situation, short of provisions, and a voyage of 250 miles before me and plead with him for this slight privilege, but it was of no avail. I then visited the American consul and asked his assistance and found him powerless to aid me in this matter. The collector of customs held my papers until the next morning, although I asked for them as soon as I found I could not buy any provisions, say about an hour and a half after I entered, but he refused to give them to me until the next morning. Immediately on receiving my papers on Thursday morning, I started for home, arriving on Sunday. I think the treatment I received harsh and cruel, driving myself and crew to sea with a scant supply of provisions, we having but little flour and water and liable to be buffeted about for days before reaching home.

MEDEO ROSE.

MASSACHUSETTS, *Essex*, ss:

OCTOBER 13, 1886.

Personally appeared Medeo Rose, and made oath to the truth of the above statement.

Before me.

[SEAL.]

AARON PARSONS, *N. P.*



[Sub-inclosure 2.]

*Affidavit of Captain Tupper, of the schooner Jeannie Seaverns.*

I, Joseph Tupper, master of schooner *Jeannie Seaverns*, of Gloucester, Mass., being duly sworn, do depose and say: That on Thursday, October 28, while on my passage home from a fishing trip, the wind blowing a gale from southeast, and a heavy sea running, I was obliged to enter the harbor of Liverpool, Nova Scotia, for shelter. Immediately on coming to anchor was boarded by Captain Quigley, of Canadian cruiser *Terror*, who ordered me to go on shore at once and enter at the custom-house, to which I replied that such was my intention. He gave me permission to take two men in the boat with me, but they must remain in the boat and not step on shore. I asked Captain Quigley if I could, after entering, visit some of my relatives who resided in Liverpool, and whom I had not seen for many years. This privilege he denied me. After entering, having returned to my vessel, some of my relatives came off to see me. When Captain Quigley saw their boat alongside of my vessel he sent an officer and boat's crew, who ordered them away, and at sundown he placed an armed guard on board our vessel, who remained on board all night, and was taken off just before we sailed in the morning.

I complied with the Canadian laws, and had no intention or desire to violate them in any way; but to be made a prisoner on board my own vessel, and treated like a suspicious character, grates harshly upon the feelings of an American seaman, and I protest against such treatment, and respectfully ask from my own Government protection from such unjust, unfriendly, and arbitrary treatment.

JOSEPH TUPPER.

MASSACHUSETTS, *Essex*, ss:

NOVEMBER 4, 1886.

Personally appeared Joseph Tupper, and made oath to the truth of the above statement.

Before me.

[SEAL.]

AARON PARSONS, *N. P.**Sir L. West to Mr. Bayard.*

BRITISH LEGATION,

*Washington, November 12, 1886.* (Received November 12.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, together with certain statements in which complaint is made of the conduct of the collector of customs at Shelburne, Nova Scotia, and the conduct of Captain Quigley, of the Canadian cruiser *Terror*, in their dealings with certain American fishing vessels, and to inform you that I have forwarded the same to Her Majesty's Government.

I have, &amp;c.,

L. S. SACKVILLE WEST.

*Sir L. West to Mr. Bayard.*

BRITISH LEGATION,  
Washington, November 15, 1886. (Received November 16.)

SIR: With reference to your notes of the 19th and 20th ultimo, I have the honor to inform you that I am requested by the Earl of Iddesleigh to state to you that the Dominion Government have been asked to furnish immediate reports upon the action of their authorities in the cases of the American fishing vessels *Everett Steele* and *Pearl Nelson*.

I have, &c.,

L. S. SACKVILLE WEST.

*Mr. Bayard to Mr. Phelps.*

No. 459.]

DEPARTMENT OF STATE,  
Washington, November 15, 1886.

SIR: The season for taking mackerel has now closed, and I understand the marine police force of the territorial waters in British North America has been withdrawn, so that no further occasion for the administration of a strained and vexatious construction of the convention of 1818, between the United States and Great Britain, is likely for several months at least.

During this period of comparative serenity, I earnestly hope that such measures will be adopted by those charged with the administration of the respective Governments as will prevent the renewal of the proceedings witnessed during the past fishing season in the ports and harbors of Nova Scotia, and at other points in the maritime provinces of the Dominion, by which citizens of the United States engaged in open-sea fishing were subjected to much unjust and unfriendly treatment by the local authorities in those regions, and thereby not only suffered serious loss in their legitimate pursuit, but, by the fear of annoyance, which was conveyed to others likewise employed, the general business of open-sea fishing by citizens of the United States was importantly injured.

My instructions to you during the period of these occurrences have from time to time set forth their regrettable character, and they have also been brought promptly to the notice of the representative of Her Majesty's Government at this capital.

These representations, candidly and fully made, have not produced those results of checking the unwarranted interference (frequently accompanied by rudeness and an unnecessary demonstration of force) with the rights of our fishermen guaranteed by express treaty stipulations, and secured to them—as I confidently believe—by the public commercial laws and regulations of the two countries, and which are demanded by the laws of hospitality to which all friendly civilized nations owe allegiance. Again I beg that you will invite Her Majesty's counselors gravely to consider the necessity of preventing the repetition of conduct on the part of the Canadian officials which may endanger the peace of two kindred and friendly nations.

To this end, and to insure to the inhabitants of the Dominion the efficient protection of the exclusive rights to their inshore fisheries, as



provided by the convention of 1818, as well as to prevent any abuse of the privileges reserved and guarantied by that instrument forever to the citizens of the United States engaged in fishing, and responding to the suggestion made to you by the Earl of Iddesleigh, in the month of September last, that a *modus vivendi* should be agreed upon between the two countries to prevent encroachment by American fishermen upon the Canadian inshore fisheries, and equally to secure them from all molestation when exercising only their just and ancient rights, I now inclose the draft of a memorandum which you may propose to Lord Iddesleigh, and which, I trust, will be found to contain a satisfactory basis for the solution of existing difficulties, and assist in securing an assured, just, honorable, and, therefore, mutually satisfactory settlement of the long-vexed question of the North Atlantic fisheries.

I am encouraged in the expectation that the propositions embodied in the memorandum referred to will be acceptable to Her Majesty's Government, because, in the month of April, 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States minister in London, the draft of a protocol which in substance coincides with the first article of the proposal now sent to you, as you will see by reference to Vol. 1 of the U. S. Diplomatic Correspondence for 1866, p. 98 *et seq.*

I find that, in a published instruction to Sir F. Bruce, then Her Majesty's minister in the United States, under date of May 11, 1866, the Earl of Clarendon, at that time Her Majesty's secretary of state for foreign affairs, approved them, but declined to accept the final proposition of Mr. Seward's protocol, which is not contained in the memorandum now forwarded.

Your attention is drawn to the great value of these three propositions, as containing a well-defined and practical interpretation of Article 1 of the convention of 1818, the enforcement of which co-operatively by the two Governments, it may reasonably be hoped, will efficiently remove those causes of irritation of which variant constructions hitherto have been so unhappily fruitful.

In proposing the adoption of a width of ten miles at the mouth as a proper definition of the bays in which, except on certain specified coasts, the fishermen of the United States are not to take fish, I have followed the example furnished by France and Great Britain in their convention signed at Paris, on the 2d of August, 1839. This definition was referred to and approved by Mr. Bates, the umpire of the commission under the treaty of 1853, in the case of the United States fishing schooner *Washington*, and has since been notably approved and adopted in the convention signed at The Hague, in 1882, and subsequently ratified, in relation to fishing in the North Sea, between Germany, Belgium, Denmark, France, Great Britain, and the Netherlands.

The present memorandum also contains provisions for the usual commercial facilities allowed everywhere for the promotion of legitimate trade, and nowhere more fully than in British ports and under the commercial policies of that nation. Such facilities can not with any show of reason be denied to American fishing-vessels when plying their vocations in deep-sea fishing grounds in the localities open to them equally with other nationalities. The convention of 1818 inhibits the "taking, drying, or curing fish" by American fishermen in

certain waters and on certain coasts, and when these objects are effected, the inhibitory features are exhausted. Everything that may presumably guard against an infraction of these provisions will be recognized and obeyed by the Government of the United States, but should not be pressed beyond its natural force.

By its very terms and necessary intendment, the same treaty recognizes the continuance permanently of the accustomed rights of American fishermen, in those places not embraced in the renunciation of the treaty, to prosecute the business as freely as did their forefathers.

No construction of the convention of 1818 that strikes at or impedes the open-sea fishing by citizens of the United States can be accepted, nor should a treaty of friendship be tortured into a means of such offense, nor should such an end be accomplished by indirection. Therefore, by causing the same port regulations and commercial rights to be applied to vessels engaged therein as are enforced relative to other trading craft, we propose to prevent a ban from being put upon the lawful and regular business of open-sea fishing.

Arrangements now exist between the Governments of Great Britain and France, and Great Britain and Germany, for the submission in the first instance of all cases of seizure to the joint examination and decision of two discreet and able commanding officers of the navy of the respective countries, whose vessels are to be sent on duty to cruise in the waters to be guarded against encroachment. Copies of these agreements are herewith inclosed for reference. The additional feature of an umpire in case of a difference of opinion is borrowed from the terms of Article 1 of the treaty of June 5, 1854, between the United States and Great Britain.

This same treaty of 1854 contains in its first article provision for a joint commission for marking the fishing limits, and is therefore a precedent for the present proposition.

The season of 1886 for inshore fishing on the Canadian coasts has come to an end, and assuredly no lack of vigilance or promptitude in making seizures can be ascribed to the vessels or the marine police of the Dominion. The record of their operations discloses but a single American vessel found violating the inhibitions of the convention of 1818, by fishing within three marine miles of the coast. The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges which, up to this day, have not been particularized sufficiently to allow of an intelligent defense. Not one has been condemned after trial and hearing, but many have been fined without hearing or judgment, for technical violations of alleged commercial regulations, although all commercial privileges have been simultaneously denied to them. In no instance has any resistance been offered to Canadian authority, even when exercised with useless and irritating provocation.

It is trusted that the agreement now proposed may be readily accepted by Her Majesty's ministry.

Should the Earl of Iddesleigh express a desire to possess the text of this dispatch, in view of its intimate relation to the subject-matter of the memorandum and as evidencing the sincere and cordial disposition which prompts this proposal, you will give his lordship a copy.

I am, sir, your obedient servant,

T. F. BAYARD.



[Inclosure No. 1]

*Proposals for settlement of all questions in dispute in relation to the fisheries on the northeastern coasts of British North America.*

Whereas in the first article of the convention between the United States and Great Britain, concluded and signed in London on the 20th of October, 1818, it was agreed between the high contracting parties "that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly on the southern coast of Labrador to and through the Straits of Belleisle; and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however,* That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restriction as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a mixed commission for the following purposes, namely:

(1) To agree upon and establish by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coasts and in the adjacent waters of the British North American colonies, in conformity with the first article of the convention of 1818, except that the bays and harbors from which American fishermen are in the future to be excluded, save for the purposes for which entrance into bays and harbors is permitted by said article, are hereby agreed to be taken to be such bays and harbors as are 10 or less than 10 miles in width, and the distance of 3 marine miles from such bays or harbors shall be measured from a straight line drawn across the bay or harbor, in the part nearest the entrance, at the first point where the width does not exceed 10 miles; the said

lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

(2) To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to the fishermen of the United States.

(3) To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted:

Provided, however, that the limits, restrictions, and regulations which may be agreed upon by the said commission shall not be final, nor have any effect until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by treaty or by laws mutually acknowledged.

## ARTICLE II.

Pending a definite arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper colonial and other British officers to abstain from seizing or molesting fishing vessels of the United States unless they are found within three marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing, or preparing to fish within those limits, not included within the limits within which, under the treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

## ARTICLE III.

For the purpose of executing Article I of the convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruise during the fishing season on the southern coasts of Nova Scotia. Whenever a fishing vessel of the United States shall be seized for violating the provisions of the aforesaid convention by fishing or preparing to fish within three marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions included within the limits within which fishing is by the terms of the said convention renounced, such vessel shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of the different nationality, shall hear and examine into the facts of the case. Should the said commanding officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the vice-admiralty court at Halifax. If, however, the said commanding officers should differ in opinion, they shall name



some third person to act as umpire between them, and should they be unable to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the umpire.

#### ARTICLE IV.

The fishing vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies; and such privileges shall be exercised subject to the same rules and regulations and payment of the same port charges as are prescribed for other vessels of the United States.

#### ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States fishing vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the high contracting parties agree to appoint a joint commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the treaty of 1818, said commission to make awards therefor to the parties injured.

#### ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian customs regulations, and the United States agrees to admonish its fishermen to comply with them, and cooperate in securing their enforcement.

[Inclosure No. 2.—Translation.]

Arrangement between France and Great Britain concerning the Newfoundland fisheries, November 14, 1885. (See *ante*, p. 69.)

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*Mr. Bayard to Mr. Phelps.*

No. 462.]

DEPARTMENT OF STATE,  
Washington, November 20, 1886.

SIR: On the 6th of the present month I wrote you concerning the treatment of the United States fishing schooner *Marion Grimes*, of Gloucester, Mass., on October 7, 1886, in the outer harbor of Shelburne, Nova Scotia, by Captain Quigley, of the Canadian cruiser *Terror*.

I received yesterday and now inclose a copy of the statement made under oath by Captain Landry of the *Marion Grimes*, and present it as supplementary and confirmatory of my former communication on the subject.

I am, &c.,

T. F. BAYARD.

[Inclosure.]

"I, Alexander Landry, master of schooner *Marion Grimes*, of Gloucester, being duly sworn, do depose and say:

"That on Monday, October 4, 1886, I sailed from Gloucester on a fishing trip to Western Bank. On the night of Thursday, October 7, the wind blowing almost a gale from the southeast and a heavy sea running, we came to anchor in the entrance of Shelburne Harbor about midnight for shelter. We were then fully 10 miles from the custom-house at Shelburne. At 4.30 a. m. of the next day we hove up our anchor to continue our voyage, the wind having died away almost to a calm. Just as we had got our anchor on the bow an officer and boat's crew from Canadian cruiser *Terror* (which laid off Sand Point some 3 miles above us) came on board and told me we must come to anchor at once and go to the custom-house at Shelburne and enter and clear. I at once anchored the vessel and taking my boat and two of my crew started for the custom-house. When we reached the *Terror*, Captain Quigley ordered me to come on board his vessel, leave my boat and men, and go with him in his boat to Shelburne. I arrived at the custom-house at about 8.30 a. m., and waited until 9 a. m., when Collector Attwood arrived. I then entered and cleared my vessel and was about to pay the charges and depart, when Captain Quigley entered the office and told the collector he ought not to clear my vessel as I had attempted to leave the harbor without reporting, and that the case should be laid before the authorities at Ottawa. Collector Attwood then withheld my papers until a decision should be received from Ottawa. I then tried to find the American consul, calling at his office three times during the day, and was unable to find him. But in the afternoon found a Mr. Blatchford in the consul's office, who informed me that my vessel had been fined \$400, and I wired my owners accordingly. At 4 p. m. returned with Captain Quigley on board the *Terror*, and when on board he informed me that my vessel was fined \$400.

"He then sent a boat's crew on board my schooner, telling me to go with them, but detaining my boat and two men, and ordered me to take my schooner up to Shelburne at once. We started and got as far as Sand Point, and came to anchor for want of wind at about 10 o'clock p. m., and alongside the *Terror*. At 3 o'clock a. m. on Saturday, October 9, accompanied by the *Terror*, we started again for Shelburne inner harbor, arriving there about 7 o'clock a. m., and then the boat's crew left us and my two men came on board in my boat. I then went on shore and found the American consul, who informed me he could not give me any assistance. During Saturday, Sunday, and Monday I awaited dispatches from my owner in regard to the payment of the fine. On Monday morning, it being the anniversary of my birthday, I hoisted the American flag to the mast-head, and immediately Captain Quigley (speaking from the deck of his vessel) ordered me to haul it down, which I did; but after thinking the matter over, I concluded that as no regular seizure of my vessel had been made, no broad arrow put upon my mast, but my vessel only detained until a deposit of the fine had been made, Captain Quigley had acted beyond his authority, and acting on this conclusion I again set my flag at the mast-head. Captain Quigley again ordered me to haul down the flag, which I refused to do; upon which he came on



board my vessel with eight men, and asked who gave the authority to hoist that flag. I replied that I took the authority myself. He then said, 'Well, I'll haul it down myself,' which I forbid him to do; but without heeding me he immediately hauled down the flag, unbent it, unrove the halliards, and passed the flag to me. I passed it back to him, telling him as he had hauled it down he better take charge of it himself. He then ordered his men to haul the vessel into the wharf, which they did, and Collector Attwood came on board and put a broad arrow (↑) on the mainmast and placed two watchmen on the wharf to watch the vessel. On Tuesday, October 12, at 10 a. m., Collector Attwood informed me that the vessel was released, but I must pay the bill for watching, amounting to \$8, and to save further delay I did so. On Tuesday evening, October 12, sailed for the Western Bank in continuation of my voyage.

"ALEXANDER (his x mark) LANDRY,  
"Master.

"Witness:

"J. WARREN WONSON.

"MASSACHUSETTS, ESSEX, ss:

"NOVEMBER 13, 1886.

"Personally appeared Alexander Landry and made oath to the truth of the above statement before me.

"[SEAL.]

AARON PARSONS,  
"Notary Public."

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*Mr. Phelps to Lord Iddesleigh.*

LEGATION OF THE UNITED STATES,  
London, November 27, 1886.

MY LORD: I have the honor to transmit herewith a copy of an instruction, under date of November 6, 1886, received by me from the Secretary of State of the United States, relative to the case of the United States fishing vessel the *Marion Grimes*.

The subject is so fully presented in this document, a copy of which I am authorized by the Secretary to place in the hands of your lordship, that I can add nothing to what is therein set forth, except to request your lordship's early attention to the case, which appears to be a very flagrant violation of the rights secured to American fishermen under the treaty of 1818.

I have, etc.,

E. J. PHELPS.

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*The Earl of Iddesleigh to Mr. Phelps.*

FOREIGN OFFICE, November 30, 1886.

SIR: I have given my careful consideration to the contents of the note of the 11th September last, which you were good enough to address to me in reply to mine of the 1st of the same month, on the subject of the North American fisheries.

The question, as you are aware, has for some time past engaged the serious attention of Her Majesty's Government and the notes

which have been addressed to you in relation to it, both by my predecessor and by myself, have amply evinced the earnest desire of Her Majesty's Government to arrive at some equitable settlement of the controversy. It is, therefore, with feelings of disappointment that they do not find in your note under reply any indication of a wish on the part of your Government to enter upon negotiations based on the principle of mutual concessions, but rather a suggestion that some *ad interim* construction of the terms of the existing treaty should, if possible, be reached, which might for the present remove the chance of disputes; in fact, that Her Majesty's Government, in order to allay the differences which have arisen, should temporarily abandon the exercise of the treaty rights which they claim and which they conceive to be indisputable. For Her Majesty's Government are unable to perceive any ambiguity in the terms of Article 1 of the convention of 1818, nor have they as yet been informed in what respects the construction placed upon that instrument by the Government of the United States differs from their own. They would, therefore, be glad to learn in the first place whether the Government of the United States contest that by Article 1 of the convention United States fishermen are prohibited from entering British North American bays or harbors on those parts of the coast referred to in the second part of the article in question for any purposes save those of *shelter, repairing damages, purchasing wood, and obtaining water.*

Before proceeding to make some observations upon the other points dealt with in your note, I have the honor to state that I do not propose in the present communication to refer to the cases of the schooners *Thomas F. Bayard* and *M. cot*, to which you allude.

The privileges manifestly secured to United States fishermen by the convention of 1818 in Newfoundland, Labrador, and the Magdalen Islands are not contested by Her Majesty's Government, who, whilst determined to uphold the rights of Her Majesty's North American subjects, as defined in the convention, are no less anxious and resolved to maintain in their full integrity the facilities for prosecuting the fishing industry on certain limited portions of the coast which are expressly granted to citizens of the United States. The communications on the subject of these two schooners, which I have requested Her Majesty's minister at Washington to address to Mr. Bayard, can not, I think, have failed to afford to your Government satisfactory assurances in this respect.

Reverting now to your note under reply, I beg to offer the following observations on its contents:

In the first place, you take exception to my predecessor having declined to discuss the case of the *David J. Adams*, on the ground that it was still *sub judice*, and you state that your Government are unable to accede to the proposition contained in my note of the 1st of September last, to the effect that "it is clearly right, according to practice and precedent, that such diplomatic action should be suspended pending the completion of the judicial inquiry."

In regard to this point, it is to be remembered that there are three questions calling for investigation in the case of the *David J. Adams*:

(1) What were the acts committed which led to the seizure of the vessel?



(2) Was her seizure for such acts warranted by any existing laws?

(3) If so, are those laws in derogation of the treaty rights of the United States?

It is evident that the first two questions must be the subject of inquiry before the third can be profitably discussed, and that those two questions can only be satisfactorily disposed of by a judicial inquiry. Far from claiming that the United States Government would be bound by the construction which British tribunals might place on the treaty, I stated in my note of the 1st September that if that decision should be adverse to the views of your Government, it would not preclude further discussion between the two Governments and the adjustment of the question by diplomatic action.

I may further remark that the very proposition advanced in my note of the 1st of September last, and to which exception is taken in your reply, has on a previous occasion been distinctly asserted by the Government of the United States under precisely similar circumstances, that is to say, in 1870, in relation to the seizure of American fishing vessels in Canadian waters for alleged violation of the convention of 1818.

In a dispatch of the 29th of October, 1870, to Mr. W. A. Dart, United States consul-general at Montreal (which is printed at page 431 of the volume for that year of the Foreign Relations of the United States, and which formed part of the correspondence referred to by Mr. Bayard in his note to Sir L. West of the 20th of May last), Mr. Fish expressed himself as follows:

"It is the duty of the owners of the vessels to defend their interests before the courts at their own expense, and without special assistance from the Government at this stage of affairs. It is for those tribunals to construe the statutes under which they act. If the construction they adopt shall appear to be in contravention of our treaties with Great Britain, or to be (which can not be anticipated) plainly erroneous in a case admitting of no reasonable doubt, it will then become the duty of the Government—a duty which it will not be slow to discharge—to avail itself of all necessary means for obtaining redress."

Her Majesty's Government, therefore, still adhere to their view that any diplomatic discussion as to the legality of the seizure of the *David J. Adams* would be premature until the case has been judicially decided.

It is further stated in your note that "the absence of any statute authorizing proceedings or providing a penalty against American fishing vessels for purchasing bait or supplies in a Canadian port to be used in lawful fishing" affords "the most satisfactory evidence that up to the time of the present controversy no such construction has been given to the treaty by the British or by the colonial parliament as is now sought to be maintained."

Her Majesty's Government are quite unable to accede to this view, and I must express my regret that no reply has yet been received from your Government to the arguments on this and all the other points in controversy, which are contained in the able and elaborate report (as you courteously describe it) of the Canadian minister of marine and fisheries, of which my predecessor communicated to you a copy.

In that report reference is made to the argument of Mr. Bayard, drawn from the fact that the proposal of the British negotiators of the convention of 1818, to the effect that American fishing vessels should carry no merchandise, was rejected by the American negotiators; and it is shown that the above proposal had no application to American vessels resorting to the Canadian coasts, but only to those exercising the right of inshore fishing and of landing for the drying and curing of fish on parts of the coasts of Newfoundland and Labrador.

The report, on the other hand, shows that the United States negotiators proposed that the right of "procuring bait" should be added to the enumeration of the four objects for which the United States fishing vessels might be allowed to enter Canadian waters; and that such proposal was rejected by the British negotiators, thus showing that there could be no doubt in the minds of either party at the time that the "procuring of bait" was prohibited by the terms of the article. The report, moreover, recalls the important fact that the United States Government admitted, in the case submitted by them before the Halifax Commission in 1877, that neither the convention of 1818 nor the treaty of Washington conferred any right or privilege of trading on American fishermen; that the "various incidental and reciprocal advantages of the treaty, such as the privileges of traffic, purchasing bait and other supplies, are not the subject of compensation, because the treaty of Washington confers no such rights on the inhabitants of the United States, who now enjoy them merely by sufferance, and who can at any time be deprived of them."

This view was confirmed by the ruling of the commissioners. Whilst I have felt myself bound to place the preceding observations before you in reply to the arguments contained in your note, I beg leave to say that Her Majesty's Government would willingly have left such points of technical detail and construction for the consideration of a commission properly constituted to examine them, as well as to suggest a means for either modifying their application or substituting for them some new arrangement of a mutually satisfactory nature.

I gather, however, from your note that, in the opinion of your Government, although a revision of treaty stipulations on the basis of mutual concessions was desired by the United States before the present disputes arose, yet the present time is inopportune for various reasons, among which you mention the irritation created in the United States by the belief that the action of the Canadian Government has had for its object to force a new treaty on your Government.

Her Majesty's Government learn with much regret that such an impression should prevail, for every effort has been made by the Canadian Government to promote a friendly negotiation and to obviate the differences which have now arisen. Indeed, it is hardly necessary to remind you that, for six months following the denunciation by your Government of the fishery articles of the treaty of Washington, the North American fisheries were thrown open to citizens of the United States without any equivalent, in the expectation that the American Government would show their willingness to treat the question in a similar spirit of amity and good will.

Her Majesty's Government can not but express a hope that the whole correspondence may be laid immediately before Congress, as they believe that its perusal would influence public opinion in the



United States in favor of negotiating, before the commencement of the next fishing season, an arrangement based on mutual concessions, and which would therefore (to use the language of your note) "consist with the dignity, the interests, and the friendly relations of the two countries."

Her Majesty's Government can not conceive that negotiations commenced with such an object and in such a spirit could fail to be successful; and they trust, therefore, that your Government will endeavor to obtain from Congress, which is about to assemble, the necessary powers to enable them to make to Her Majesty's Government some definite proposals for the negotiation of a mutually advantageous arrangement.

I have, etc.,

IDDESLEIGH.

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*Mr. Bayard to Sir L. West.*

DEPARTMENT OF STATE,  
Washington, December 1, 1886.

SIR: As possessing additional and very disagreeable bearing upon the general subject of the harsh treatment of American fishing vessels during the late season by the local authorities of the maritime provinces of Her Majesty's Dominion of Canada, I have the honor to send you herewith a copy of a letter addressed to me, under date of the 12th ultimo, by Capt. Solomon Jacobs, master of the American fishing schooner *Molly Adams*, of Gloucester, Mass. You will share, I doubt not, the regret I feel at such churlish and inhospitable treatment of a vessel which had freely, and with great loss and inconvenience, rendered such essential service to the suffering and imperiled crew of a Nova Scotian vessel. But for his generous act Captain Jacobs would have had no occasion to put into Malpeque, or, subsequently, when short of provisions, into Port Medway. As his narrative shows, the local authorities at Malpeque treated him with coldness and rudeness, making no provision to receive the Nova Scotian crew he had saved from such imminent danger, even causing him to incur a pecuniary burden in completion of his humane rescue, and even treating the landing of the property so saved from the wreck of the Nova Scotian vessel, on her own shores, as not lawful for an American fishing vessel "within the three-mile limit."

The treatment of Captain Jacobs at Port Medway is a fitting sequel to that received by him at Malpeque. Having undergone fourteen days detention in the latter port, and having shared his purse and slender stock of provisions with the men he had rescued, he put to sea, when, his supplies falling short by reason of his charitable action, he asked leave to purchase at Port Medway "half a barrel of flour, or enough provisions to take his vessel and crew home." With full knowledge of the cause of Captain Jacobs's dearth of provisions, even this the collector at Port Medway absolutely refused, and threatened Captain Jacobs with the seizure of his vessel "if he bought anything whatever." The urgent need of supplies in which Captain Jacobs stood, is shown by the fact that although the run with favorable weather from Port Medway to his home port, Gloucester, Mass., only occupied three days, his crew were on half rations for two days, and without food for one day of that time. It is painful to conjecture

what might have been their distress had the *Molly Adams* encountered storms or head winds.

I am confident that Her Majesty's Government, than which none has more generously fulfilled the obligations of the unwritten code of seafaring humanity, will hasten to rebuke the treatment of Captain Jacobs at the hands of the local authorities of Nova Scotia, by exhibiting gratitude for his act in saving seventeen of their own people from death, and tendering him compensation for the delays and expenses he has undergone through the breaking up of his legitimate fishing venture.

The closing part of Captain Jacobs's letter may serve to show the irresponsible and different treatment he was subjected to in the several ports he visited, where the only common feature seems to have been a surly hostility. At Port Hood, for instance, Captain Jacobs being sick, his brother landed and reported in his stead, and, after paying the regular fee, was told that his report was a nullity, and that the vessel would be liable to penalty for unauthorized landing of her crew unless her captain reported in person, which, although ill, he was compelled to do, and the fee was thereupon levied a second time. This is a small matter measured by the amount of the fee, but it is surely discreditable and has a tendency which cannot be too much deplored.

In my late correspondence I have treated of the necessary and logical results of permitting so irritating and unfriendly a course of action, and I will not therefore now enlarge on this subject.

I have, &c.,

T. F. BAYARD.

[Inclosure.]

*Captain Jacobs to Mr. Bayard.*

GLOUCESTER, November 12, 1886.

THE HON. SECRETARY OF STATE.

SIR: I would most respectfully ask your attention to the following facts as showing the spirit and manner of the application of law on the part of the officials of the Dominion of Canada.

On or about the 26th of September, when off Malpeque, Prince Edward Island, I fell in with the British schooner *Neskilita*, of Lockeport, Nova Scotia, which had run on Malpeque bar in making the harbor. It was blowing very heavy; sea running high. The crew was taken off by my vessel about 12 o'clock at night. There were seventeen men in all. We took care of them, and fed them for three days. The *Neskilita* became a total wreck. We saved some of the material.

The cutter *Critic*, Captain McClennan, one of the Canadian cruisers, was lying in the harbor of Malpeque. The captain boarded my vessel, and I reported to him the facts of the wreck and the condition of the men. They had saved a portion of their clothing. He neither offered to care for the wrecked crew, to feed them, nor to give them or myself any assistance whatever. Having some of the wrecked material on board, I asked the captain of the cutter for permission to land it. He referred me to the local collector. I went to the collector, and he referred me back to the captain of the cutter. As the



cutter had gone out, the captain of the *Neskilita* assumed the responsibility and took the things ashore. The captain of the cutter told me that I could put the saved material on board a Nova Scotia vessel if I went outside of the three-mile limit to do it. I endeavored to get some of the people on shore to take the wrecked crew, but no one would do it unless I would be responsible for their board. Finally, I gave the crew \$60, enough to pay their passage home on the cars, and also gave them provisions to last during their journey.

Malpeque is a barred harbor, and it is only in smooth water that it is safe to go out over the bar, and my vessel drawing fourteen feet of water, and there was only fourteen feet of water on the bar, it was impossible for me to go out. By being detained in port in disposing of this wrecked crew I lost over ten days of valuable time before I could get out to fish, and during that time the fleet took large quantities of mackerel. Having to feed so many on my vessel left me short of provisions, and in a short time afterwards I put into Port Medway, and stated the circumstances, and asked permission to buy half a barrel of flour or enough provisions, to take my vessel and crew home. This was absolutely refused, and the collector threatened me that if I bought anything whatever he would seize my vessel. I was obliged to leave without obtaining anything and came home in three days, on short rations, a distance of 300 miles. The wind and weather being favorable, we had a good passage, but yet we were without provisions for one day before we arrived home. I wish to state most emphatically that the officials differ in their construction of our rights. Fees are different in every port, and as there is no standard of right fixed by our own Government, the fishermen are at the mercy of a class of officials hostile to them and their business, and with but little knowledge of law or its application.

For instance, at Souris, Prince Edward Island, 15 cents is charged. For reporting at Port Mulgrave, Nova Scotia, 50 cents is charged. At Port Hood, I being sick, my brother went to the custom-house to report. The official charged him 25 cents, and told him that unless the captain reported in person the report was invalid; that men from the vessel would not be allowed ashore unless the captain reported.

In the afternoon of the same day I was able to go to the office, and was charged 25 cents for my report, making 50 cents. In the matter of anchorage fees, at Port Mulgrave, Nova Scotia, I paid \$1.50; at Malpeque, \$1; at Sydney, \$1.17. At some ports we have to pay anchorage fees every time we go in, as at Halifax; at others twice for the season.

Now, I would most respectfully state that the official service throughout is actuated apparently from a principle of annoyance wherever and whenever it can be so applied; that there is only harmony of action in this regard alone, and that local laws and regulations are enforced against us without regard to any rights we may have under treaty; that the effect of this enforcement is not to promote but to interfere and to limit by unjust pains, fees, and penalties the right of shelter, obtaining wood and water, and making of repairs guaranteed by treaty of 1818; that instead of the restriction contemplated the local laws make a technical obligation that is without their province or power, and enforce penalties that should never be admitted or allowed by our Government.

And I would pray that in the case recited, and many others that can be shown if required, we may be protected from local laws and their enforcement that abridge our rights and have never received the sanction of the two great contracting powers in the construction and agreement of the treaty of 1818.

I have, &c.,

SOLOMON JACOBS.

\$1.17.]

NORTH SYDNEY, C. B., October 13, 1886.

*Molly Adams, 117 tons.—Captain Jacobs to harbor commissioners.*

To amount of harbor dues----- \$1 17

Received payment.

M. J. PHUEN.

No. 100.

\$1.00.]

*Dominion of Canada.—Harbor dues.*

MALPEQUE, P. E. I., 1886.

Received from Solomon Jacobs, master of the schooner *Molly Adams*, from  
—— 118 tons register, the sum of \$1, being harbor dues at this port.

EDWARD LARKINS,  
Harbor Master.

No. —.

*Dominion of Canada.—Harbor dues.*

PORT MULGRAVE, N. S., August 30, 1886.

Received from Solomon Jacobs, master of the schooner *Mollie Adams*, from  
North Bay, 117 tons register, the sum of \$1.50, being harbor dues at this port.

[SEAL.]

DUNCAN C. GILLIES,  
Harbor Master.

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*Mr. Phelps to Lord Iddesleigh.*

LEGATION OF THE UNITED STATES,

London, December 2, 1886.

MY LORD: Referring to the conversation I had the honor to hold with your lordship on the 30th November, relative to the request of my Government that the owners of the *David J. Adams* may be furnished with a copy of the original reports, stating the charges on which that vessel was seized by the Canadian authorities, I desire now to place before you in writing the grounds upon which this request is preferred.

It will be in the recollection of your lordship, from the previous correspondence relative to the case of the *Adams*, that the vessel was first taken possession of for the alleged offense of having purchased a small quantity of bait within the port of Digby, in Nova Scotia, to be used in lawful fishing. That later on a further charge was made against the vessel of a violation of some custom-house regulation, which it is not claimed, so far as I can learn, was ever before insisted on in a similar case. I think I have made it clear in my note of the 2d of June last, addressed to Lord Rosebery, then foreign secretary, that no act of the English or of the Canadian Parliament existed at the time of this seizure which legally justified it on the ground of the purchase of bait, even if such an act would have been authorized by



the treaty of 1818. And it is a natural and strong inference, as I have in that communication pointed out, that the charge of violation of custom-house regulations was an afterthought, brought forward in order to sustain proceedings commenced on a different charge and found untenable.

In the suit that is now going on in the admiralty court at Halifax, for the purpose of condemning the vessel, still further charges have been added. And the Government of Canada seek to avail themselves of a clause in the act of the Canadian Parliament of May 22, 1868, which is in these words: "In case a dispute arises as to whether any seizure has or has not been legally made or as to whether the person seizing was or was not authorized to seize under this act \* \* \* the burden of proving the illegality of the seizure shall be on the owner or claimant."

I can not quote this provision without saying that it is, in my judgment, in violation of the principles of natural justice, as well as of those of the common law. That a man should be charged by police or executive officers with the commission of an offense and then be condemned upon trial unless he can prove himself to be innocent is a proposition that is incompatible with the fundamental ideas upon which the administration of justice proceeds. But it is sought in the present case to carry the proposition much further, and to hold that the party inculpated must not only prove himself innocent of the offense on which his vessel was seized, but also of all other charges upon which it might have been seized that may be afterward brought forward and set up at the trial.

Conceiving that if the clause I have quoted from the act of 1868 can have effect (if allowed any effect at all) only upon the charge on which the vessel was originally seized, and that seizure for one offense can not be regarded as *prima facie* evidence of guilt of another, the counsel for the owners of the vessel have applied to the prosecuting officers to be furnished with a copy of the reports made to the Government of Canada in connection with the seizure of the vessel, either by Captain Scott, the seizing officer, or by the collector of customs at Digby, in order that it might be known to the defendant and be shown on trial what the charges are on which the seizure was grounded, and which the defendant is required to disprove. This most reasonable request has been refused by the prosecuting officers.

Under these circumstances I am instructed by my Government to request of Her Majesty's Government that the solicitors for the owners of the *David J. Adams* in the suit pending in Halifax may be furnished, for the purposes of the trial thereof, with copies of the reports above mentioned. And I beg to remind your lordship that there is no time to be lost in giving the proper direction if it is to be in season for the trial, which, as I am informed, is being pressed.

I have, etc.,

E. J. PHELPS.

*Mr. Phelps to Lord Iddesleigh.*

LEGATION OF THE UNITED STATES,  
London, December 3, 1886.

MY LORD: I have the honor to acknowledge the receipt of your note of the 30th November, on the subject of the Canadian fisheries,

and to say that I shall at an early day submit to your lordship some considerations in reply.

Meanwhile, I have the honor to transmit, in pursuance of the desire expressed by your lordship in conversation on November 30, a copy of an outline for a proposed *ad interim* arrangement between the two governments on this subject which has been proposed by the Secretary of State of the United States.

And I likewise transmit, in connection with it, a copy of the instruction from the Secretary of State which accompanied it, and which I am authorized to submit to your lordship.

I have, etc.,

E. J. PHELPS.

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*Sir L. West to Mr. Bayard.*

BRITISH LEGATION,  
Washington, December 6, 1886.  
(Received December 7.)

SIR: With reference to your note of the 27th of October last, I have the honor to inclose herewith a certified copy of a report of a committee of the privy council of Canada, together with copy of the customs laws,<sup>a</sup> which documents contain the information required respecting the sale and exportation of fresh herring from Grand Manan Island.

I have, &c.,

L. S. SACKVILLE WEST.

[Enclosure.]

*Certified copy of a report of a committee of the honorable the privy council of Canada, approved by his excellency the governor-general, in council, on the 24th day of November, 1886.*

The committee of the privy council having had their attention called by a telegram, dated 18th November instant, from Her Majesty's minister at Washington, to his former dispatch of the 28th October ultimo, inclosing a copy of a note from the honorable Mr. Bayard, and the inclosures, asking for authentic information respecting the Canadian laws regulating the sale and exportation of fresh herring from the Grand Manan Island.

The minister of marine and fisheries, to whom said dispatch was referred for early report, states that any foreign vessel "not manned nor equipped, nor in any way prepared for taking fish," has full liberty of commercial intercourse in Canadian ports upon the same conditions as are applicable to regularly registered foreign merchant vessels; nor is any restriction imposed upon any foreign vessel dealing in fish of any kind different from those imposed upon foreign merchant vessels dealing in other commercial commodities.

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<sup>a</sup> (1) 47 Vict., cap. 29, "An act to amend the customs act, 1883." (Assented to April 19, 1884.) (2) 46 Vict., cap. 12, "An act to amend and consolidate the acts respecting the customs." (Assented to May 25, 1883.)



That the regulations under which foreign vessels may trade at Canadian ports are contained in the customs laws of Canada (a copy of which is herewith), and which render it necessary, among other things, that upon arrival at any Canadian port a vessel must at once enter inward at the custom-house, and upon the completion of her loading clear outwards for her port of destination.

The committee recommend that your excellency be moved to transmit a copy of this minute, together with a copy of the customs laws, as containing authentic information respecting Canadian laws regulating the sale and exportation of fresh herring, to Her Majesty's minister at Washington, for the information of the honorable Mr. Bayard, Secretary of State for the United States.

JOHN J. MCGEE,  
*Clerk, Privy Council.*

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*Mr. Bayard to Mr. Phelps.*

No. 466.]

DEPARTMENT OF STATE,  
*Washington, December 7, 1886.*

SIR: I inclose herewith, for your information, a copy of my note of the 1st instant to Sir Lionel West, Her Britannic Majesty's minister at this capital, concerning the treatment by the Canadian authorities of the American fishing schooner *Molly Adams*, of Gloucester, Mass.

I am, etc.,

T. F. BAYARD.

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*Sir L. West to Mr. Bayard.*

WASHINGTON, *December 7, 1886.*

SIR: With reference to your note of the 30th of July last, I am instructed by the Earl of Iddesleigh to communicate to you the inclosed copy of a dispatch, with its inclosures, from the officer administering the Government of Canada, respecting the action of the customs officer at Magdalen Islands, in the case of the United States fishing vessel *Mascotte*.

I have, &c.,

L. S. SACKVILLE WEST.

[Inclosure.]

*Acting Governor Lord A. G. Russell to Mr. Stanhope.*

HALIFAX, NOVA SCOTIA, *October 30, 1886.*

SIR: With reference to your telegraphic message of the 22d August, and to your dispatch of the 25th of August, marked Secret, transmitting copy of a dispatch from Her Majesty's chargé d'affaires at Washington, with a note from Mr. Bayard, complaining of the action of the customs officer at Magdalen Islands with reference to the American fishery schooner *Mascotte*. I have the honor to forward herewith a copy of an approved minute of the privy council of Canada, embodying a report of the minister of marine and fisheries on the subject.

I have, &c.,

A. G. RUSSELL, *General.*

[Sub-Inclosure 1.]

*Report of a committee of the honorable the privy council, approved by his excellency the administrator of the Government in council for Canada on the 30th day of October, 1886.*

The committee of the privy council have had under consideration a telegram of the 22d August and a dispatch of the 25th August last, from the right honorable the secretary of state for the colonies, transmitting copy of a letter from Her Majesty's minister at Washington, inclosing a note from Mr. Secretary Bayard, complaining of the action of the customs officer at Magdalen Islands, with reference to the American fishing schooner *Mascotte*.

The minister of marine and fisheries, to whom the correspondence was referred, observes that Mr. Bayard, in his note to the British minister at Washington, says:

"I am also in possession of the affidavit of Alex. T. Vachem, master of the American fishing schooner *Mascotte*, who entered Port Amherst, Magdalen Islands, and was there threatened by the customs official with seizure of his vessel if he attempted to obtain bait for fishing or take a pilot."

And from a report of the customs officer at Magdalen Islands, a copy of which, so far as it relates to the case in point, is hereto annexed, it appears that no grounds exist for the complaint made by the master of the *Mascotte*.

The minister states that Captain Vachem [McEachern] was served with a printed copy of the "warning," and was, in addition, informed by the collector that under the treaty of 1818 he had no right to buy bait or to ship men. He was not forbidden to take fish, but, on the contrary, the collector pointed out to him on the chart the places in which, by the convention of 1818, he, as a United States fisherman, had the right to inshore fishing, and one of the places so pointed out to him was the Magdalen Islands.

Notwithstanding the "warning" and the personal explanation of the collector, it appears that Captain Vachem [McEachern] did go up the country and attempt to hire men, and upon his return informed the collector that he could not get any. For this, clearly an illegal act, he was not interfered with by the collector.

The minister further observes that the convention of 1818, while it grants to United States fishermen the right of fishing in common with British subjects on the shores of the Magdalen Islands, does not confer upon them privileges of trading or of shipping men, and it was against possible acts of the latter kind, and not against fishing inshore, or seeking the rights of hospitality guaranteed under the treaty, that Captain Vachem [McEachern] was warned by the collector.

With reference to the remarks of the colonial secretary that "Her Majesty's Government would recommend that special instructions should be issued to the authorities at the places where the inshore fisheries has been granted by the convention of 1818 to the United States fishermen, calling their attention to the provisions of that convention, and warning them that no action contrary thereto may be taken in regard to United States fishing vessels," the minister states that the circular instructions issued to collectors of customs recite the



articles of the convention of 1818, which grant to United States fishermen the right to take fish upon the shore of the Magdalen Islands, and of certain parts of the coasts of Labrador and Newfoundland, which instructions the collector in question had received, and the import of which his report shows him to be familiar with.

In addition to this, the commander of the fishery protection steamer *La Canadienne* was ordered to visit Magdalen Islands, and explain fully to collectors there the extent of their powers.

The minister, in view of these instructions, printed and oral, does not deem it necessary to send further special orders.

The committee, concurring in the foregoing report, advise that your excellency be moved to transmit a copy hereof, if approved, to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
Clerk, Privy Council.

[Sub-Inclosure 2.]

*Mr. Poinchaud to the Minister of Marine and Fisheries.*

CUSTOM-HOUSE, MAGDALEN ISLANDS,  
August 28, 1886.

SIR: I beg to acknowledge the receipt of your telegram respecting captain of the schooner *Mascotte's* report in reference to my having threatened him with seizure.

I replied, on receipt: "*Mascotte* information incorrect. Particulars per mail Tuesday."

Particulars: On arrival of the captain I served him a "warning" personally; informed him he could not buy [ (?) bait ] or ship men.

I say this to all American fishermen. He tried, however, to hire; went up the country to hire, but could not hire a man.

I saw him and men go up, and on his return he told me he could not hire. I did not oppose him. He attended halibutting at Seven Islands, Dominion. I found this out since. I deny having said I would seize him if he obtained bait, himself or crew. I did not use the term, but it suits the captain or owners to use it, as it serves their meaning to make the report good.

I particularly showed him where, on the chart, he had the right to fish inshore, to wit, at the Magdalen Islands, Cape Ray, &c., as per treaty in my hands then.

I think I was very lenient with him and all American fishermen calling here, knowing their privileges.

I treated them so gentlemanly that I am surprised to hear he made the above inaccurate report to you.

Yours, &c.,

J. B. F. POINCHAUD,  
Collector of Customs.

*Sir L. West to Mr. Bayard.*

WASHINGTON, December 7, 1886.

SIR: With reference to your notes of the 9th and 18th of August last, I am instructed by the Earl of Iddesleigh to communicate to you the inclosed copy of a dispatch from the governor-general of Canada,

with its inclosures, relative to the causes of complaint alleged by the masters of the United States fishing vessels *Rattler*, *Shiloh*, and *Julia Ellen* against Captain Quigley, of the Canadian cruiser *Terror*.

I have, &c.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.]

*Acting Governor Lord A. G. Russell to Mr. Stanhope.*

HALIFAX, NOVA SCOTIA, *October 29, 1886.*

SIR: I have the honor to forward herewith a copy of an approved minute of the privy council of Canada, furnishing the report asked for in your dispatch of the 1st September last, respecting the alleged unfriendly treatment of the United States fishing schooner *Rattler* in being required to report to the collector of customs at Shelburne, Nova Scotia, when seeking that harbor for shelter.

I beg also to draw your attention to the statement of the captain of the *Terror*, appended to the above order in council, which gives the facts concerning the cases of the *Shiloh* and *Julia Ellen*, a report as to which was requested in your dispatch of the 9th ultimo.

I have, &c.,

A. G. RUSSELL,  
General.

[Sub-inclosure.]

*Report of a committee of the honorable the privy council for Canada, approved by his excellency the administrator of the Government in council on the 28th day of October, 1886.*

The committee of the privy council have had their attention called by a cablegram from the right honorable Mr. Stanhope as to when he may expect answer to dispatch *Rattler*. The honorable Mr. Bowell, for the minister of marine and fisheries, to whom the papers were referred, submits, for the information of his excellency in council, that having considered the statements, copies of which are annexed, of Captain Quigley, of the Government cutter *Terror*, and of the collector of customs at Shelburne, with reference to the subject-matter of the dispatch, he is of opinion that these officers only performed their respective duties in the case of the *Rattler*, and that no just grounds exist for the complaint put forward in Mr. Bayard's dispatch of a violation of that hospitality which all civilized nations prescribe, or of a gross infraction of treaty stipulations.

The minister states that it does not appear at all certain, from the statements submitted, that this vessel put into Shelburne for a harbor in consequence of stress of weather. It does, however, appear that immediately upon the *Rattler* coming into port, Captain Quigley sent his chief officer to inform the captain of the *Rattler* that before sailing he must report his vessel at the custom-house, and left on board the *Rattler* a guard of two men to see that no supplies were landed or taken on board or men allowed to leave the vessel during her stay in Shelburne Harbor. That at midnight the guard fired a shot as a signal to the cruiser, and the first officer at once again proceeded to the *Rattler*, and found the sails being hoisted and the



anchor weighed preparatory to leaving port. The captain being informed he must comply with the customs regulations and report his vessel, headed her up the harbor. That on the way up she became becalmed, when the first officer of the *Terror* took the captain of the *Rattler* in his boat and rowed him to the town, where the collector of customs received his report at the unusual hour of 6 a. m. rather than detain him, and the captain with his vessel proceeded to sea.

The minister observes that under section 25 of the customs act every vessel entering a port in Canada is required to immediately report at the customs, and the strict enforcement of this regulation as regards the United States fishing vessels has become a necessity in view of the illegal trade transactions carried on by the United States fishing vessels when entering Canadian ports under pretext of their treaty privileges.

That under these circumstances, a compliance with the customs act, involving only the report of a vessel, cannot be held to be a hardship or an unfriendly proceeding.

The minister submits, in view of the repeated groundless complaints of being harshly treated that have been made during the present season by captains of United States fishing vessels, and in almost every instance traceable to a refusal or neglect to observe the customs regulations, which, it is proper to state, are enforced upon other vessels as well as those of the United States, herewith a letter written by Captain Blake, of the United States fishing schooner *Andrew Burnham*, which appeared in the Boston (Massachusetts) Herald of the 7th instant, and also the editorial comments thereon made in a subsequent issue of the paper referred to.

The minister believes that the statements made by Captain Blake are strictly accurate, and as applied to other vessels are substantiated by the weekly boarding reports, received by the fishery department from the different captains engaged in the fisheries protection service. He, the minister, therefore respectfully submits that the reflections of Mr. Secretary Bayard, characterizing the treatment extended to the captain of the *Rattler* as unwarrantable and unfriendly, is not merited, in view of the facts as stated by Captain Quigley and Collector Attwood.

The committee concur in the report of the acting minister of marine and fisheries and advise that your excellency be moved to transmit a copy of this minute, if approved, to the right honorable Her Majesty's principal secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
Clerk, Privy Council.

[Inclosure No. 2.]

[Extract from the Boston Herald of October 9, 1886.]

*A Fishing Captain's Experience.*—The letter of Capt. Nathan F. Blake, of the fishing schooner *Andrew Burnham*, of this city, which we published on Wednesday, would apparently indicate that the Canadian officials have not been disposed to push the requirements of their law quite as vigorously as some of our fishermen have maintained. Captain Blake says he has experienced not the least trouble in his intercourse with the Canadian officials, but that as he treated

them courteously, they, on their side, have reciprocated in like terms. There is, undoubtedly, a great deal of bitterness felt on both sides, and probably this bitterness has led both parties to be ungracious in their own conduct, and to exaggerate the wrongs they have endured, hardships frequently due to an unwillingness to observe the requirements of the law as these are now laid down. If all American fishing captains exhibited the same courtesy and moderation that Captain Blake has shown, we imagine that there would be very little trouble in arriving at an equitable and pleasing understanding with Canada.

[Inclosure No. 3.]

*Captain Quigley to Major Silton.*

SHELBURNE, September 30, 1886.

SIR: I beg to acknowledge the receipt of your letter of the 27th instant, requesting the circumstances connected with the boarding of the vessels *Rattler*, *Julia* and *Ellen*, and *Shiloh*.

In the case of the *Rattler*, she came into Shelburne Harbor on the evening of the 4th August at 6 o'clock. She being at some distance from where I was anchored, and it being too rough to send my boat so far, I fired a musket signal for her to round-to, which she did, and came to an anchor alongside of my vessel.

I then sent the chief officer to board her; he reported she put in for shelter. The captain was then told by the chief officer to report his vessel before he sailed, and that he must not let his men on shore, and that he would leave two men, who are always armed, on board to see that he did not otherwise break the law.

About midnight the captain hoisted his sails to leave port, thereby evading the customs law requiring him to report (for which I refer you to section 25 of the customs act), and disregarding my instructions.

The watchman fired a signal, calling my attention to his act, when I sent the chief officer to tell him he must lower his sails and report his vessel in the morning, otherwise he would likely have his vessel detained. He did so and sailed up in company with the chief officer at 4 o'clock a. m. On the way it fell calm, and the vessel anchored. The chief officer with my boat's crew rowed him up to the custom-house, where he reported at 6 a. m.; and returned, passing out to sea at 8 a. m. The captain was only asked to report his vessel as all others do, but was not disposed to do so.

In the case of the *Julia* and *Ellen*, she came into the harbor of Liverpool on the 9th of August, about 5 p. m. Being some distance from me, I fired a blank musket shot to round her to. When she anchored I boarded her, and the captain reported that he came in for water. I told him to report his vessel in the morning, as it was then after customs hours, and that he must not let his men ashore, and that I would leave two men on his vessel to see that my instructions were carried out, and to see that he did not otherwise break the law.

In the morning, at 8 o'clock, I called for the captain to go to the custom-house and told him his men could go on and take water while he was reporting, so that he would be all ready to sail when he returned, which they did, and he sailed at noon.



In the case of the *Shiloh*, she came into the harbor about 6 p. m. on the 9th of August, at Liverpool, and a signal was fired in her case the same as the others.

When she anchored I boarded her, and the captain reported she was in for water. I told him it was then too late to report at the customs till morning, and that he must not allow his crew on shore; also that I would leave two men on board to see that he did not otherwise break the law, and that my instructions were carried out.

In the morning I called for the captain, when taking the *Julia and Ellen's* captain ashore. When there I told him, as I did the other, that his men could go on taking water while he was reporting, so that he could sail when he returned, and not be delayed. This they did not do.

I have reason to know that it was not water this vessel came in for, as several of the crew lived there, and it was for the purpose of letting his men ashore, and not for taking water, that he put in. He afterwards emptied six barrels of water, stating that they were sour, and fooled all day filling them, delaying the time, that he might get his crew on shore. I refused to allow his crew on shore for any other purpose than to take water, after completing which, the weather being fine, I ordered him to sea in the evening.

The signals that were fired were not intended to make them come-to quickly, but as a signal for them to either round-to or show their ensign.

After the *Shiloh* sailed the harbor master informed me that she landed two men at the mouth of the harbor, 7 miles down, before she reported, and the evening she sailed she called after dark and picked them up.

In many cases it is an understood thing between the captains and crews to let the men ashore and then make out they have deserted. In all cases where a vessel puts in for shelter the captain reports, and the rest of his crew are not allowed ashore, as the vessel only put in for the privilege of shelter and for no other purpose.

When she puts in for water, after reporting, the captain is allowed to take his boats and the men he requires to procure water, and the rest remain on board, after which he is ordered to sea. When in for repairs he is allowed all the privileges he requires after reporting, and when ready is ordered to sea. In all cases, except when in for repairs, I place men on board to see that the law is not violated, as many of those vessels put into the harbor and make taking water and seeking shelter an excuse either to get men or land them, or to allow them a chance to see their friends, or to get goods ashore if the vessel is on her way from American ports to the fishing grounds, and have landed men here and at other ports on this coast in my absence.

In one case in this port, a vessel, finding I was in the harbor, let men take a boat and land, she going on her way home to the States. That is why I put men on these vessels, to keep them from breaking the law under cover of night. I might remark here that the collector of customs at Liverpool informed me that the *Shiloh* on her previous voyage remained in port five days after being ordered out, delaying for the purpose of letting the men be with their friends.

Now that they are not allowed all the privileges they once enjoyed, it is an outrage on my part.

These are the facts connected with those vessels which I reported to Captain Scott while in Halifax some time ago. I treat all courteously, but firmly, and find no trouble with any but a few who wish to evade the law.

I am, etc.,

THOMAS QUIGLEY.  
*Government Cruiser Terror.*

[Inclosure No. 4.]

*Mr. Attwood to the Commissioner of Customs, Ottawa.*

CUSTOM-HOUSE, SHELburnE, *September 6, 1886.*

SIR: I have to acknowledge the receipt of your telegram of the 4th instant relative to schooner *Rattler*, and I wired an answer this morning as requested.

On the morning of the 4th ultimo chief officer of *Terror*, accompanied by Capt. A. F. Cunningham, called at this office. Captain Cunningham reported his vessel inwards as follows, viz: Schooner *Rattler*, of Gloucester, 93 tons register, 16 men, from fishing banks, with 465 barrels mackerel, came in for shelter.

I was afterwards informed by the officer of cutter that they found the schooner the evening before at anchor off Sandy Point, 5 miles down the harbor. Two men from cutter were put on board, and the master required to report at customs in the morning. I was also informed that the master, Captain Cunningham, made an attempt to put to sea in the night by hoisting sails, weighing anchor, &c., but was stopped by officer from cutter.

I am, &c.,

W. H. ATTWOOD,  
*Collector.*

*Sir L. West to Mr. Bayard.*

WASHINGTON, *December 7, 1886.*

SIR: I am instructed by the Earl of Idlesleigh to communicate to you the inclosed copy of a dispatch, with its inclosures, from the officer administering the Government of Canada, expressing the regret of the Dominion Government at the action of the captain of the Canadian cutter *Terror* in lowering the United States flag from the United States fishing schooner *Marion Grimes*, of Gloucester, Mass., while that vessel was under detention at Shelburne, Nova Scotia.

I have, &c.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.]

*Acting Governor Lord A. G. Russell to Mr. Stanhope.*

HALIFAX, NOVA SCOTIA, *October 27, 1886.*

SIR: I have the honor to transmit herewith a copy of an approved minute of the privy council of Canada, expressing the regret of my Government at the action of the captain of the Canadian cutter *Terror* in lowering the United States flag from the United States fishing schooner *Marion Grimes*, of Gloucester, Mass., while that



vessel was under detention at Shelburne, Nova Scotia, by the collector of customs at that port for an infraction of the customs regulations.

I have communicated a copy of this order in council to Her Majesty's minister at Washington.

I have, &c.,

A. G. RUSSELL,  
General.

[Sub-Inclosure 1.]

*Report of a committee of the honorable the privy council for Canada, approved by his excellency the administrator of the Government in council on the 26th October, 1886.*

On a report, dated the 14th October, 1886, from the Hon. Mackenzie Bowell, for the minister of marine and fisheries, stating that on Monday, the 11th October instant, the United States fishing schooner *Marion Grimes*, of Gloucester, Mass., was under detention at Shelburne, Nova Scotia, by the collector of customs at that port for an infraction of the customs regulations; that while so detained, and under the surveillance of the Canadian Government cutter *Terror*, the captain of the *Marion Grimes* hoisted the United States flag.

The minister further states that it appears that Captain Quigley, of the *Terror*, considered such act as an intimation that there was an intention to rescue the vessel, and requested Captain Landry to take the flag down. This request was complied with. An hour later, however, the flag was again hoisted, and on Captain Landry being asked if his vessel had been released, and replying that she had not, Captain Quigley again requested that the flag be lowered. This was refused, when Captain Quigley himself lowered the flag, acting under the belief that while the *Marion Grimes* was in possession of the customs authorities, and until her case had been adjudicated upon, the vessel had no right to fly the United States flag.

The minister regrets that he should have acted with undue zeal, although Captain Quigley may have been technically within his right while the vessel was in the custody of the law.

The committee advise that your excellency be moved to forward a copy of this minute, if approved, to the right honorable the secretary of state for the colonies, and to Her Majesty's minister at Washington, expressing the regret of the Canadian Government at the occurrence.

All of which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
Clerk, Privy Council.

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*Mr. Bayard to Mr. Phelps.*

No. 470.]

DEPARTMENT OF STATE,  
Washington, December 8, 1886.

SIR: With reference to instruction No. 466, of the 7th instant, concerning the case of the American fishing schooner *Molly Adams*, I

now transmit to you herewith, for your further information, a copy of the letter of Mr. Solomon Jacobs, of the 12th ultimo, in which the matter was brought to the attention of the Department.

I am, etc.,

T. F. BAYARD.

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*Mr. Bayard to Sir L. S. Sackville West.*

DEPARTMENT OF STATE,  
Washington, December 11, 1886.

SIR: I have the honor to acknowledge your note of the 7th instant, with which you communicate, by the direction of the Earl of Iddesleigh, a copy of the report of a committee of the privy council of Canada, approved October 26 last, wherein the regret of the Canadian Government is expressed for the action of Captain Quigley, of the Canadian Government cruiser *Terror*, in lowering the flag of the United States fishing schooner *Marion Grimes* whilst under detention by the customs authorities, in the harbor of Shelburne, Nova Scotia, on October 11 last.

Before receiving this communication I had instructed the United States minister at London to make representation of this regrettable occurrence to Her Majesty's minister for foreign affairs, and desire now to express my satisfaction at the voluntary action of the Canadian authorities, which, it seems, was taken in October last, but of which I had no intimation until your note of the 7th instant was received.

I have, etc.,

T. F. BAYARD.

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*Mr. Bayard to Mr. Phelps.*

No. 471.]

DEPARTMENT OF STATE,  
Washington, December 13, 1886.

SIR: On the 8th instant I received from the British minister at this capital a communication dated the 7th of this month, accompanied by a copy of the minutes of the honorable privy council of Canada, in relation to the action of Captain Quigley, of the Canadian cutter *Terror*, in lowering the flag of the United States fishing schooner *Marion Grimes* whilst under detention by the customs authorities in Shelburne Harbor, on the 11th of October last.

As this occurrence had been made the subject of an instruction to you by me, on the 6th ultimo, whereby you were requested to bring the incident to the attention of Her Majesty's Government, I hasten to inform you of the voluntary action of the Canadian Government and of their expression of regret for the action of the officer referred to.

The copy of the correspondence and proceedings of the Canadian authorities discloses the dates of their action in the premises, of which, however, my earliest information was on the 8th instant, in the note of Sir Lionel West, a copy of which is herewith sent to you.

I am, etc.,

T. F. BAYARD.



*Lord Iddesleigh to Mr. Phelps.*

FOREIGN OFFICE, December 16, 1886.

SIR: I have the honor to acknowledge the receipt of your note of the 27th ultimo relative to the case of the *Marion Grimes*, stated to have been fined and detained at Shelburne, Nova Scotia, in October last.

As other cases besides that of the *Marion Grimes* are alluded to in the documents forwarded in your note, it will be desirable to take each case separately, and inform you shortly of the steps which Her Majesty's Government have taken in regard to them.

In respect to the case of the *Marion Grimes*, I have already received, through Her Majesty's secretary of state for the colonies, a copy of a dispatch from the Dominion Government, in which they express their regret at the action taken by Captain Quigley in hauling down the United States flag. I have transmitted a copy of this dispatch to Her Majesty's minister at Washington, with instructions to communicate it to Mr. Bayard, and I beg leave to now inclose a copy of it for your information.

Her Majesty's Government cannot doubt that, as respects the incident of the flag, the apology thus spontaneously tendered by the Canadian Government will be accepted by the United States Government in the friendly and conciliatory disposition in which it is offered, whilst as regards the other statements concerning Captain Quigley's conduct, Her Majesty's Government do not at present feel themselves in a position to express any opinion.

The Dominion Government have been requested to furnish a full report on the various circumstances alleged, and when this is received I shall have the honor to address a further communication to you upon the subject.

As concerns the case of the *Julia Ellen* and *Shiloh*, it will probably suffice to communicate to you the inclosed copies of reports from the Canadian Government relative to these two vessels. These reports have already been sent to Her Majesty's minister at Washington for communication to Mr. Bayard.

The protests made by the United States Government in the case of the *Everett Steele* was not received in this country until the 1st ultimo; and although the Canadian Government have been requested by telegraph to furnish a report upon the circumstances alleged, sufficient time has not yet elapsed to enable Her Majesty's Government to be in possession of the facts as reported by the Dominion Government.

Her Majesty's Government greatly regret that incidents of the description alluded to should occur, and they can only renew the assurance conveyed to you in my note of the 30th ultimo, that whilst firmly resolved to uphold the undoubted treaty rights of Her Majesty's North American subjects in regard to the fisheries, they will also equally maintain the undoubted rights of United States fishermen to obtain shelter in Canadian ports, under such restrictions as may be necessary to prevent their abusing the privileges reserved to them by treaty.

I notice that in Mr. Bayard's note to you of the 6th ultimo, concerning the case of the *Marion Grimes*, and also in his note to Sir L.

West of the 19th October last, relative to the case of the *Everett Steele*, an old discussion is revived which Her Majesty's Government had hoped was finally disposed of by the correspondence which took place on the subject in 1815 and 1816.

I allude to the argument that a right to the common enjoyment of the fisheries by Great Britain and the United States, after the separation of the latter from the mother country, was recognized by the treaty of 1783, although the exercise of that right was made subject to certain restrictions. I refer to this point merely to observe that the views of Her Majesty's Government in relation to it have not been modified in any way since the date of Lord Bathurst's note of the 30th of October, 1815, to Mr. John Quincy Adams.

I have, etc.

IDDESLEIGH.

*Sir L. S. Sackville West to Mr. Bayard.*

WASHINGTON, December 24, 1886.

(Received December 27.)

SIR: With reference to your note of the 11th ultimo, I have the honor to inform you that I am requested by the Earl of Iddesleigh to acquaint you that Her Majesty's Government have desired the Canadian Government to furnish them with a report on the circumstances attending the alleged inhospitable treatment of United States fishing schooners *Laura Sayward* and *Jennie Seavers* by the Canadian authorities.

I have, etc.,

L. S. SACKVILLE WEST.

*Sir L. S. Sackville West to Mr. Bayard.*

WASHINGTON, January 6, 1887.

(Received January 7.)

SIR: With reference to your letters of the 19th and 20th October, I have the honor to transmit to you herewith reports from the Government of Canada relative to the cases of the United States fishing vessels *Pearl Nelson* and *Everett Steele*, which I have been instructed by the Earl of Iddesleigh to communicate to the United States Government.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.]

*The Marquis of Lansdowne to Mr. Stanhope.*

GOVERNMENT HOUSE,  
Ottawa, November 29, 1886.

SIR: I have the honor to transmit herewith a copy of an approved minute of the privy council of Canada, furnishing the report asked for in your telegraphic message of the 6th November, with reference to the detention of the American schooner *Everett Steele*, at Shelburne, Nova Scotia, for an infraction of the customs regulations of the Dominion.

I have, etc.,

LANDSDOWNE.



[Sub-inclosure.]

*Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council, on the 18th November, 1886.*

The committee of the privy council are in receipt of a telegram from the right honorable the secretary of state for the colonies, in the words:

“United States Government protest against proceedings of Canadian authorities in the case of *Pearl Nelson* and *Everett Steele*, said to have put into Arichat and Shelburne, respectively, for purposes sanctioned by convention. Particulars by post. Send report soon as possible.”

The minister of marine and fisheries, to whom the telegram was referred, submits that the schooner *Everett Steele* appears from the report of the collector of customs at Shelburne to have been at that port on the 25th March last, and sailed without reporting. On her return to Shelburne in September she was detained by the collector of customs for an infraction of the customs law.

The captain having assured the collector that he had been misled by the deputy harbor-master, who informed him his vessel could remain in port for twenty-four hours without entering, and that he had no intention of violating the customs regulations, this statement was reported to the minister of customs at Ottawa, when the vessel was at once allowed to proceed to sea, and that no evidence is given of any desire or intention of denying to the captain of the *Everett Steele* any treaty privileges he was entitled to enjoy.

The committee, concurring in the above, respectfully recommend that your excellency be moved to transmit a copy of this minute, if approved, to the right honorable the secretary of state for the colonies.

All of which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
Clerk Privy Council.

[Inclosure No. 2.]

*The Marquis of Lansdowne to Mr. Stanhope.*

GOVERNMENT HOUSE,  
Ottawa, November 29, 1886.

SIR: With reference to your telegraphic message of the 6th instant, asking to be furnished with a report in the case of the *Pearl Nelson* and *Everett Steele*, I have the honor to transmit herewith a copy of an approved minute of the privy council of Canada, embodying a report of my minister of marine and fisheries, to which is appended a copy of the correspondence which has passed between the commissioner of customs for Canada and the United States consul-general at Halifax relating to the case of the American schooner *Pearl Nelson*.

I have, etc.,

LANSDOWNE.

[Sub-Inclosure.]

*Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council, on the 18th November, 1886.*

The committee of the privy council are in receipt of a telegram from the right honorable the secretary of state for the colonies, in the words:

“United States Government protest against proceedings of Canadian authorities in case of *Pearl Nelson* and *Everett Steele*, said to have put into Arichat and Shelburne, respectively, for purposes sanctioned by convention. Particulars by post. Send report soon as possible.”

The minister of marine and fisheries, to whom the telegram was referred, submits a copy of a letter addressed by the commissioner of customs for Canada to the consul-general of the United States at Halifax, and also a copy of Mr. Phelan's reply thereto.

The minister submits that it is clear, from Captain Kempt's affidavit, that he was guilty of an infraction of the customs regulations in allowing men to land from his vessel before she had been reported, and the minister of customs having favorably considered Captain Kempt's representations as to his ignorance of the customs regulations requiring that vessels should be reported before landing either men or cargo therefrom, has remitted the fine of \$200 which had been imposed in the case of the American schooner *Pearl Nelson*.

The minister further submits that it would appear from the collector of customs' report that his remark that “he would seize the vessel” had reference solely to her violation of the customs law, and that no evidence is given of any desire or intention of denying to the captain of the *Pearl Nelson* any treaty privileges he was entitled to enjoy.

The committee, concurring in the above, respectfully recommend that your excellency be moved to transmit a copy of this minute, if approved, to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
Clerk Privy Council, Canada.

[Inclosure No. 3.]

*Mr. Parmelee to Mr. Phelan.*

OTTAWA, October 22, 1886.

SIR: I have the honor to acknowledge the receipt of your letter of the 11th instant, *re* seizure of the American schooner *Pearl Nelson* for an infraction of the customs laws, etc.

The commissioner of customs' report in connection with this matter, which has been approved by the minister of customs, reads as follows:

“The undersigned, having examined this case, has come to the conclusion that the captain of the vessel did violate the provisions of sections 25 and 180 of ‘the customs act, 1883,’ by landing a number of



his crew before going to the custom-house to report; that his plea of having come into port solely from stress of weather is inconsistent with the circumstances, and is denied by the collector of customs, who reports that 'the night was one of the finest and most moderate experienced there this summer,' and that 'his crew were landed only in the morning.' That even if the 'stress of weather' plea was sustained by facts it would not exempt him from the legal requirement of reporting his vessel before 'breaking bulk' or landing his crew, and it is evident that there was nothing to hinder his reporting, as the crew appear to have had no difficulty in handling the vessel's boats; that it was very easy for the crew or any of them to have taken valuable contraband goods ashore on their persons in the absence of any customs officer at the landing-place. Inasmuch, however, as there is no charge of actual smuggling preferred against the vessel, the undersigned respectfully recommends that the deposit of \$200 be refunded, deducting therefrom any expenses incurred.

"J. JOHNSON."

I trust the above may be considered a satisfactory answer to your letter referred to.

I have, etc.,

W. G. PARMELEE,  
*Assistant Commissioner.*

[Inclosure No. 4.]

*Mr. Phelan to Mr. Parmelee.*

HALIFAX, November 2, 1886.

SIR: I have the honor to acknowledge the receipt of your communication of the 22d ultimo, concerning the action of the customs department of Canada in the case of the American schooner *Pearl Nelson*, and to say I was much pleased at the decision arrived at in that case. I have informed the Government of the United States that the fine in the case referred to was ordered to be refunded.

I have also to say that the Department of State, in acknowledging the receipt of a dispatch from me setting forth that you had placed all the papers in the cases of the American schooners *Crittenden* and *Holbrook* in my hands for perusal, said: "The attention of Mr. Parmelee in referring the matter to you is appreciated. It shows a proper spirit."

I trust the department of customs will pass on the other cases as soon as possible.

I have, etc.,

M. H. PHELAN,  
*Consul-General.*

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*Lord Iddesleigh to Mr. Phelps.*

FOREIGN OFFICE, January 11, 1887.

SIR: Her Majesty's Government have considered the request contained in your note of the 2d ultimo, to the effect that the owners of the *David J. Adams* may be furnished with copies of the original reports stating the charges on which that vessel was seized by the Canadian authorities; and I have now the honor to state to you that

if the owners of this vessel are legally entitled to be furnished with those reports they can obtain them by the process of the courts; and there seems no ground for the interference of Her Majesty's Government with the ordinary course of justice.

As regards the means of obtaining information for the purposes of the defense, I would point out that in the report of the Canadian minister of marine and fishery, of which a copy was communicated to you on the 23d July last, it is stated that from a date immediately after the seizure "there was not the slightest difficulty in the United States consul-general, and those interested in the vessel, obtaining the fullest information," and that "apart from the general knowledge of the offenses which it was claimed the master had committed, and which was furnished at the time of the seizure, the most technical and precise details were readily obtainable at the registry of the court, and from the solicitors of the Crown."

With respect to the statement in your note that a clause in the Canadian act of May 22, 1868, to the effect that, "In case a dispute arises as to whether any seizure has or has not been legally made, or as to whether the person seized was or was not authorized to seize under this act, the burden of proving the illegality of the seizure shall be on the owner or claimant," is in violation of the principles of national justice, as well as of those of the common law, I have to observe that the statute referred to is cap. 61 of 1868, which provides for the issue of licenses to foreign fishing vessels, and for the forfeiture of such vessels fishing without a license; and that the provisions of Article 10, to which you take exception, are commonly found in laws against smuggling, and are based on the rule of law that a man who pleads that he holds a license or other similar document shall be put to the proof of his plea and required to produce the document.

I beg leave to add that the provisions of that statute, so far as they relate to the issue of licenses, has been in operation since the year 1870.

I have, etc.,

IDDLESLEIGH.

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*Sir J. Pouncefote to Mr. Phelps.*

FOREIGN OFFICE, *January 14, 1887.*

SIR: With reference to my predecessor's note of the 30th of November last, I have the honor to transmit to you a copy of a report from the Canadian minister of justice upon the seizure of the American fishing vessel *David J. Adams*.

I have forwarded a copy of this report to Her Majesty's minister at Washington for communication to the United States Government.

I have the honor, etc.,

J. PAUNCEFOTE,  
(For the Secretary of State.)



*Sir L. S. Sackville West to Mr. Bayard.*

BRITISH LEGATION,  
Washington, January 19, 1887. (Received January 21.)

SIR: With reference to your note of the 23d of September last, I have the honor to inclose to you herewith a copy of a dispatch from the governor-general of Canada to Her Majesty's secretary of state for the colonies, inclosing a report from his Government on the case of the United States fishing vessel *Crittenden*.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.]

*Lord Lansdowne to Mr. Stanhope.*

CANADA, GOVERNMENT HOUSE,  
Ottawa, December 4, 1886.

SIR: In reply to your dispatch of the 12th of October last, transmitting a copy of a letter with its inclosure from the foreign office, requesting to be furnished with a report in the case of the United States fishing vessel *Crittenden*, I have the honor to forward herewith a copy of an approved minute of the privy council of Canada embodying a report of my minister of marine and fisheries, to which is appended a statement of the customs officer at Steep Creek on the subject.

I have, etc.,

LANSDOWNE.

[Sub-inclosure.]

*Certified copy of a report of a committee of the honorable the privy council, approved by his excellency the governor-general in council, on the 16th November, 1886.*

The committee of the privy council have had under consideration a dispatch, dated 12th October, 1886, from the secretary of state for the colonies, transmitting a copy of a letter from Mr. Bayard, United States Secretary of State, to the British minister at Washington, calling attention to an alleged denial of the rights guaranteed by the convention of 1818 in the case of the American fishing schooner *Crittenden* by the customs officer at Steep Creek, in the Straits of Canso, Nova Scotia.

The minister of marine and fisheries, to whom the dispatch and inclosure were referred, submits a statement of the customs officer at Steep Creek, and observes that the captain of the *Crittenden* violated the customs laws by neglecting to enter his vessel, as requested by the customs officer, and landing and shipping a man clearly exceeded any treaty provision he was entitled to avail himself of.

It would appear that the remark made by the customs officer "that he would seize the vessel" had reference solely to the captain's violation of the customs regulations, and, the minister submits, cannot be construed into a denial of any treaty privileges the master was entitled to enjoy.

The committee, concurring in the above, respectfully recommended that your excellency be moved to inform the right honorable the

secretary of state for the colonies in the sense of the report of the ministry of marine and fisheries.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
*Clerk Privy Council.*

[Inclosure No. 2.]

*Mr. Carr to the Minister of Marine and Fisheries.*

STEEP CREEK, November 1, 1886.

SIR: Yours of the 28th of October came to hand to-day, and, in reply, can state to you that part of the crew of the schooner *Crittenden* came on shore at Steep Creek and landed their barrels and filled them with water. I went direct to the men who were filling the barrels, and told them to come and enter before taking wood and water. They said they would not enter or make any report. I told them that I would seize the schooner *Crittenden* for violating the customs laws. They said they would risk that, as the schooner was now out of the way about 3 miles from my station down the straits, and it was impossible for me to board the vessel. They also landed a man the same day with his effects, and on their return from Gloucester to the Bay St. Lawrence they shipped a man. Was looking out for the vessel, but could not catch her. I reported the case to the collector of customs at Port Hawkesbury, and on the schooner *Crittenden's* return from the Bay St. Lawrence she was seized, and Collector Bourinot got the affidavits of the captain of the said schooner and also of some of the crew, which he stated to the department. I was in the office at the time when Collector Bourinot received a telegram from the department to release the schooner *Crittenden* on the deposit of \$400.

I remain, etc.,

JAMES H. CARR, *Pro Collector.*

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*Mr. Phelps to the Marquis of Salisbury.*

LEGATION OF THE UNITED STATES,  
*London, January 26, 1887.*

MY LORD: Various circumstances have rendered inconvenient an earlier reply to Lord Iddesleigh's note of November 12, on the subject of the North American fisheries, and the termination of the fishing season has postponed the more immediate necessity of the discussion; but it seems now very important that before the commencement of another season a distinct understanding should be reached between the United States Government and that of Her Majesty relative to the course to be pursued by the Canadian authorities towards American vessels.

It is not without surprise that I have read Lord Iddesleigh's remark, in the note above mentioned, referring to the treaty of 1818, that Her Majesty's Government "have not as yet been informed in what respect the construction placed upon that instrument by the Government of the United States differs from their own."



Had his lordship perused more attentively my note to his predecessor in office, Lord Rosebery, under date of June 2, 1886, to which reference was made in my note to Lord Iddesleigh of September 11, 1886, I think he could not have failed to apprehend distinctly the construction of that treaty for which the United States Government contends and the reasons and arguments upon which it is founded.

I have again respectfully to refer your lordship to my note to Lord Rosebery of June 2, 1886, for a very full and, I hope, clear exposition of the ground taken by the United States Government on that point. It is unnecessary to repeat it, and I am unable to add to it.

In reply to the observations in my note to Lord Iddesleigh of September 11, 1886, on the point whether such discussion should be suspended in these cases until the result of the judicial proceedings in respect to them should be made known, a proposition to which, as I stated in that note, the United States Government is unable to accede, his lordship cites in support of it some language of Mr. Fish, when Secretary of State of the United States, addressed to the United States consul-general at Montreal in May, 1870. From the view then expressed by Mr. Fish the United States Government has neither disposition nor occasion to dissent. But it can not regard it as in any way applicable to the present case.

It is true beyond question that when a private vessel is seized for an alleged infraction of the laws of the country in which the seizure takes place, and the fact of the infraction, or the exact legal construction of the local statute claimed to be transgressed, is in dispute, and is in process of determination by the proper tribunal, the Government to which the vessel belongs will not usually interfere in advance of such determination and before acquiring the information on which it depends. And especially when it is not yet informed whether the conduct of the officer making the seizure will not be repudiated by the Government under which he acts, so that interference will be unnecessary. This is all, in effect, that was said by Mr. Fish on that occasion. In language immediately following that quoted by Lord Iddesleigh he remarks as follows (*italics being mine*):

"The present embarrassment is that while we have reports of several seizures upon grounds *as stated by the interested parties*, which *seem to be* in contravention of international law and special treaties relating to the fisheries, these *alleged* causes of seizure are regarded as pretensions of over zealous officers of the British navy and the colonial vessels which will, as we hope and are bound in courtesy to expect, be repudiated by the courts, before which our vessels are to be brought for adjudication."

But in the present case the facts constituting the alleged infraction by the vessel seized are not in dispute, except some circumstances of alleged aggravation not material to the validity of the seizure. The original ground of the seizure was the purchase by the master of the vessel of a small quantity of bait from an inhabitant of Nova Scotia, to be used in lawful fishing. This purchase is not denied by the owners of the vessel, and the United States Government insists, *first*, that such an act is not in violation of the treaty of 1818, and *second*, that no then existing statute in Great Britain or Canada authorized any proceedings against the vessel for such an act, even if

it could be regarded as in violation of the terms of the treaty, and no such statute has been as yet produced.

In respect to the charge subsequently brought against the *Adams*, and upon which many other vessels have been seized, that of a technical violation of the customs act, in omitting to report at the custom-house, though having no business at the port (and in some instances where the vessel seized was not within several miles of the landing), the United States Government claim, while not admitting that the omission to report was even a technical transgression of the act, that even if it were, no harm having been done or intended, the proceedings against the vessels for an inadvertence of that sort were in a high degree harsh, unreasonable, and unfriendly, especially as for many years no such effect has been given to the act in respect to the fishing vessels, and no previous notice of a change in its construction has been promulgated.

It seems apparent, therefore, that the cases in question, as they are to be considered between the two Governments, present no points upon which the decision of the courts of Nova Scotia need be awaited or would be material.

Nor is it any longer open to the United States Government to anticipate that the acts complained of will (as said by Mr. Fish in the dispatch above quoted) be repudiated as the "pretensions of over-zealous officers of the \* \* \* colonial vessels," because they have been so many times repeated as to constitute a regular system of procedure, have been directed and approved by the Canadian Government, and have been in no wise disapproved or restrained by Her Majesty's Government, though repeatedly and earnestly protested against on the part of the United States.

It is therefore to Her Majesty's Government alone that the United States Government can look for consideration and redress. It can not consent to become, directly or indirectly, a party to the proceedings complained of, nor to await their termination before the questions involved between the two Governments shall be dealt with. Those questions appear to the United States Government to stand upon higher grounds, and to be determined, in large part, at least, upon very different considerations from those upon which the courts of Nova Scotia must proceed in the pending litigation.

Lord Iddesleigh, in the note above referred to, proceeds to express regret that no reply has yet been received from the United States Government to the arguments on all the points in controversy contained in the report of the Canadian minister of marine and fisheries, of which Lord Rosebery had sent me a copy.

Inasmuch as Lord Iddesleigh and his predecessor, Lord Rosebery, have declined altogether, on the part of Her Majesty's Government, to discuss these questions until the cases in which they arise shall have been judicially decided, and as the very elaborate arguments on the subject previously submitted by the United States Government, remain, therefore without reply, it is not easy to perceive why further discussion of it on the part of the United States should be expected. So soon as Her Majesty's Government consent to enter upon the consideration of the points involved, any suggestions it may advance will receive immediate and respectful attention on the



part of the United States. Till then further argument on that side would seem to be neither consistent nor proper.

Still less can the United States Government consent to be drawn, at any time, into a discussion of the subject with the colonial Government of Canada. The treaty in question, and all the international relations arising out of it, exist only between the Governments of the United States and of Great Britain, and between those Governments only can they be dealt with. If, in entering upon that consideration of the subject which the United States have insisted upon, the arguments contained in the report of the Canadian minister should be advanced by Her Majesty's Government, I do not conceive that they will be found difficult to answer.

Two suggestions contained in that report are, however, specially noticed by Lord Iddesleigh, as being "in reply" to the arguments contained in my note. In quoting the substance of the contentions of the Canadian minister on the particular points referred to, I do not understand his lordship to depart from the conclusion of Her Majesty's Government he had previously announced, declining to enter upon the discussion of the cases in which the questions arise. He presents the observations of the report only as those of the Canadian minister made in the argument of points upon which Her Majesty's Government decline at present to enter.

I do not, therefore, feel called upon to make any answer to these suggestions; and more especially as it seems obvious that the subject can not usefully be discussed upon one or two suggestions appertaining to it, and considered by themselves alone. While those mentioned by Lord Iddesleigh have undoubtedly their place in the general argument, it will be seen that they leave quite untouched most of the propositions and reasoning set forth in my note to Lord Rosebery above mentioned. It appears to me that the question can not be satisfactorily treated aside from the cases in which they arise, and that when discussed the whole subject must be gone into in its entirety.

The United States Government is not able to concur in the favorable view taken by Lord Iddesleigh of the efforts of the Canadian Government "to promote a friendly negotiation." That the conduct of that Government has been directed to obtaining a revision of the existing treaty is not to be doubted; but its efforts have been of such a character as to preclude the prospect of a successful negotiation so long as they continue, and seriously to endanger the friendly relations between the United States and Great Britain.

Aside from the question as to the right of American vessels to purchase bait in Canadian ports, such a construction has been given to the treaty between the United States and Great Britain as amounts virtually to a declaration of almost complete non-intercourse with American vessels. The usual comity between friendly nations has been refused in their case, and in one instance, at least, the ordinary offices of humanity. The treaty of friendship and amity which, in return for very important concessions by the United States to Great Britain, reserved to the American vessels certain specified privileges has been construed to exclude them from all other intercourse common to civilized life and to universal maritime usage among nations

not at war, as well as from the right to touch and trade accorded to all other vessels.

And quite aside from any question arising upon construction of the treaty, the provisions of the custom-house acts and regulations have been systematically enforced against American ships for alleged petty and technical violations of legal requirements in a manner so unreasonable, unfriendly, and unjust as to render the privileges accorded by the treaty practically nugatory.

It is not for a moment contended by the United States Government that American vessels should be exempt from those reasonable port of custom-house regulations which are in force in countries which such vessels have occasion to visit. If they choose to violate such requirements, their Government will not attempt to screen them from the just legal consequences.

But what the United States Government complain of in these cases is that existing regulations have been construed with a technical strictness, and enforced with a severity, in cases of inadvertent and accidental violation where no harm was done, which is both unusual and unnecessary, whereby the voyages of vessels have been broken up and heavy penalties incurred. That the liberal and reasonable construction of these laws that had prevailed for many years, and to which the fishermen had become accustomed, was changed without any notice given. And that every opportunity of unnecessary interference with the American fishing vessels, to the prejudice and destruction of their business, has been availed of. Whether in any of these cases, a technical violation of some requirement of law had, upon close and severe construction, taken place, it is not easy to determine. But if such rules were generally enforced in such a manner in the ports of the world, no vessel could sail in safety without carrying a solicitor versed in the intricacies of revenue and port regulations.

It is unnecessary to specify the various cases referred to, as the facts in many of them have been already laid before Her Majesty's Government.

Since the receipt of Lord Iddesleigh's note the United States Government has learned with grave regret that Her Majesty's assent has been given to the act of the Parliament of Canada, passed at its late session, entitled "An act further to amend the act respecting fishing by foreign vessels," which has been the subject of observation in the previous correspondence on the subject between the Governments of the United States and of Great Britain.

By the provisions of this act any foreign ship, vessel, or boat (whether engaged in fishing or not) found within any harbor in Canada, or within 3 marine miles of "any of the coasts, bays, or creeks of Canada," may be brought into port by any of the officers or persons mentioned in the act, her cargo searched, and her master examined upon oath touching the cargo and voyage under a heavy penalty if the questions asked are not truly answered; and if such ship has entered such waters "*for any purpose not permitted by treaty or convention or by law of the United Kingdom or of Canada, for the time being in force, such ship, vessel, or boat and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.*"



It has been pointed out in my note to Lord Iddesleigh, above mentioned, that the 3-mile limit referred to in this act is claimed by the Canadian Government to include considerable portions of the high seas, such as the Bay of Fundy, the Bay of Chaleur, and similar waters, by drawing the line from headland to headland, and that American fishermen had been excluded from those waters accordingly.

It has been seen also that the term "any purpose not permitted by treaty" is held by that Government to comprehend every possible act of human intercourse, except only the four purposes named in the treaty—shelter, repairs, wood, and water.

Under the provisions of the recent act, therefore, and the Canadian interpretation of the treaty, any American fishing vessel that may venture into a Canadian harbor, or may have occasion to pass through the very extensive waters thus comprehended, may be seized at the discretion of any one of numerous subordinate officers, carried into port, subjected to search and the examination of her master upon oath, her voyage broken up, and the vessel and cargo confiscated, if it shall be determined by the local authorities that she has ever even posted or received a letter or landed a passenger in any part of Her Majesty's dominions in America.

And it is publicly announced in Canada that a larger fleet of cruisers is being prepared by the authorities, and that greater vigilance will be exerted on their part in the next fishing season than in the last.

It is in the act to which the one above referred to is an amendment that is found the provision to which I drew attention in a note to Lord Iddesleigh of December 2, 1886, by which it is enacted that in case a dispute arises as to whether any seizure has or has not been legally made, the burden of proving the illegality of the seizure shall be upon the owner or claimant.

In his reply to that note of January 11, 1887, his lordship intimates that this provision is intended only to impose upon a person claiming a license the burden of proving it. But a reference to the act shows that such is by no means the restriction of the enactment. It refers in the broadest and clearest terms to *any* seizure that is made under the provisions of the act, which covers the whole subject of protection against illegal fishing; and it applies not only to the proof of a license to fish, but to all questions of fact whatever, necessary to a determination as to the legality of a seizure or the authority of the person making it.

It is quite unnecessary to point out what grave embarrassments may arise in the relations between the United States and Great Britain under such administration as is reasonably to be expected of the extraordinary provisions of this act and its amendment, upon which it is not important at this time further to comment.

It will be for Her Majesty's Government to determine how far its sanction and support will be given to further proceedings, such as the United States Government have now repeatedly complained of and have just ground to apprehend may be continued by the Canadian authorities.

It was with the earnest desire of obviating the impending difficulty, and of preventing collisions and dispute until such time as a permanent understanding between the two Governments could be reached,

that I suggested, on the part of the United States, in my note to Lord Iddesleigh of September 11, 1886, that an *ad interim* construction of the terms of the treaty might be agreed on, to be carried out by instructions to be given on both sides without prejudice to the ultimate claims of either, and terminable at the pleasure of either. In an interview I had the honor to have with his lordship, in which this suggestion was discussed, I derived the impression that he regarded it with favor. An outline of such an arrangement was therefore subsequently prepared by the United States Government, which, at the request of Lord Iddesleigh, was submitted to him.

But I observe, with some surprise, that in his note of November 30, last, his lordship refers to that proposal made in my note of 11th September, as a proposition that Her Majesty's Government "should temporarily abandon the exercise of the treaty rights which they claim and which they conceive to be indisputable."

In view of the very grave questions that exist as to the extent of those rights, in respect to which the views of the United States Government differ so widely from those insisted upon by Her Majesty's Government, it does not seem to me an unreasonable proposal that the two Governments, by a temporary and mutual concession, without prejudice, should endeavor to reach some middle ground of *ad interim* construction, by which existing friendly relations might be preserved, until some permanent treaty arrangements could be made.

The reasons why a revision of the treaty of 1818 can not now, in the opinion of the United States Government, be hopefully undertaken, and which are set forth in my note to Lord Iddesleigh of September 11, have increased in force since that note was written.

I again respectfully commend the proposal above mentioned to the consideration of Her Majesty's Government.

I have, etc.,

E. J. PHELPS.

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*Mr. Bayard to Mr. Phelps.*

[Extract.]

No. 520.]

DEPARTMENT OF STATE,  
Washington, January 27, 1887.

SIR: Your dispatch No. 416, of the 12th instant, transmitting a copy of the note, dated the 11th, received by you from the late Lord Iddesleigh, in response to your note of December 2, 1886, requesting copies of the papers in the case of the *David J. Adams*, has been received.

The concluding part of Lord Iddesleigh's note seems to demand attention, inasmuch as the argument employed to justify the provisions of Article 10 of the Canadian Statutes, cap. 61 of 1868, which throw on the claimant the burden of proving the illegality of a seizure, appears to rest upon the continued operation of Article 1 of that statute, relative to the issue of licenses to foreign fishing vessels. The note in question states "that the provisions of that statute, so far as they relate to the issue of licenses, has [have?] been in operation since the year 1870."



It appears from the correspondence exchanged in 1870 between this Department and Her Majesty's minister in Washington (see the volume of Foreign Relations, 1870, pp. 407-411) that on the 8th of January, 1870, an order in council of the Canadian Government decreed "that the system of granting fishing license to foreign vessels under the act 31 Vic., cap. 61, be discontinued, and that henceforth all foreign fishermen be prevented from fishing in the waters of Canada."

During the continuance of the fishery articles of the treaty of Washington Canadian fishing licenses were not required for fishermen of the United States, and since the termination of those articles, July 1, 1885, this Department has not been advised of the resumption of the licensing system under the statute aforesaid.

The faulty construction of the last paragraph of Lord Iddesleigh's note, as transmitted with your No. 416, suggests the possibility of a clerical error in the preparation or transcription of that note, and that it may have been intended to state that the licensing provisions of the statute, cap. 61, 1868, "have *not* been in operation since 1870," but in that case it is not easy to apply the argument advanced.

I am, etc.,

T. F. BAYARD.

*Mr. Bayard to Sir L. S. Sackville West.*

DEPARTMENT OF STATE,  
Washington, January 27, 1887.

SIR: I have the honor to inclose a copy of an affidavit of the captain and two members of the crew of the schooner *Sarah H. Prior*, of Boston, stating the refusal of the captain of the Canadian revenue cutter *Critic* to permit the restoration to the former vessel, in the port of Malpeque, Prince Edward Island, of her large seine, which she had lost at sea, and which had been found by the captain of a Canadian vessel, who offered to return the seine to the *Prior*, but was prevented from doing so by the captain of the *Critic*.

This act of prevention, the reason for which is not disclosed, practically disabled the *Prior*, and she was compelled to return home without having completed her voyage, and in debt.

I have the honor to ask that Her Majesty's Government cause investigation of this case to be made.

I have, etc.,

T. F. BAYARD.

[Inclosure No. 1.]

*Mr. Prior to Mr. Bayard.*

BOSTON, December 28, 1886.

DEAR SIR: I wrote to Senator W. P. Frye, setting forth in my letter the facts contained in the affidavit inclosed. He wrote me to have it sworn to and to send it to you, which I have done. Will you please let me know what course is best to pursue in regard to it, whether to enter a claim or not? I think it is a clear, strong case, and the claim would be a just one, and will be pleased to receive your advice in the matter.

Yours, very truly,

P. H. PRIOR.

[Sub-inclosure.]

*Affidavit of the captain and crew of the schooner Sarah H. Prior.*

On this 28th day of December, A. D. 1886, personally appeared before me Captain Thomas McLaughlin, master, and George F. Little and Charles Finnegan, two of the crew of the schooner *Sarah H. Prior*, of Boston, and being duly sworn, signed and made oath to the following statement of facts:

On September 10, 1886, the schooner *Sarah H. Prior*, while running for Malpeque, Prince Edward Island, and about seven miles from that port, lost her large seine. Four days afterwards the schooner *John Ingalls*, of Halifax, N. S., Captain Wolfe, came into Malpeque and had the seine on board, which she had picked up at sea. Captain Wolfe offered to deliver the seine to Captain McLaughlin in consideration of twenty-five dollars, which offer the latter accepted and paid him the money. The Canadian revenue cutter *Critic*, Captain McLearn, was lying at Malpeque at the time, and Captain McLaughlin went to see him, to ascertain if there would be any trouble in delivering the seine. Captain McLearn would not allow the captain of the *John Ingalls* to give up the seine, so the latter returned the twenty-five dollars to Captain McLaughlin.

The schooner *Sarah H. Prior* had two seines, one large and one small size. It was the large one which she lost and the schooner *John Ingalls* picked up. She had to leave Malpeque without it, and consequently came home with a broken voyage and in debt.

THOS. McLAUGHLIN.  
GEORGE F. LITTLE.  
CHARLES FINNEGAN.

SUFFOLK, 38:

BOSTON, December 28, 1886.

Personally appeared before me Thomas McLaughlin, George F. Little, and Charles Finnegan, who signed and made oath that the foregoing statement was true.

[SEAL.]

CHARLES W. HALLSTRAIN,  
Notary Public.

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*Sir L. S. Sackville West to Mr. Bayard.*

WASHINGTON, January 28, 1887.

(Received January 29.)

SIR: I have the honor to acknowledge the receipt of your note of yesterday's date, and to inform you that I have submitted the case of the American schooner *Sarah H. Prior* to Her Majesty's Government for investigation, as requested by you.

I have, etc.,

L. S. SACKVILLE WEST.



*Sir L. S. Sackville West to Mr. Bayard.*

WASHINGTON, *January 28, 1887.*

(Received January 29.)

SIR: With reference to your notes of the 19th and 20th of October last, I have the honor to transmit to you herewith copy of a dispatch from the governor-general of Canada to Her Majesty's secretary of state for the colonies relative to the cases of the American fishing vessels *Pearl Nelson* and *Everett Steele*, which I am instructed by Her Majesty's principal secretary of state for foreign affairs to communicate to the United States Government.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure.]

*The Marquis of Lansdowne to Mr. Stanhope.*

GOVERNMENT HOUSE, *December 20, 1886.*

SIR: I had the honor of receiving your dispatch of the 22d of November in regard to the case of the *Everett Steele* and *Pearl Nelson*, recently detained at Shelburne and Arichat, Nova Scotia, for non-compliance with the customs regulations of the Dominion.

The circumstances under which the conduct of these vessels attracted the attention of the customs authorities were set out in the privy council orders of the 18th of November, certified copies of which were forwarded to you under cover of my dispatches of the 29th November.

The information contained in these documents was obtained in order to comply with the request for a report on these two cases which you had addressed to me by telegram on a previous date. I have now carefully examined the fuller statements made by Mr. Bayard, both as to the facts and as to the considerations by which the conduct of the local officials should in his opinion have been governed. You will I think find, on reference to the privy council orders already before you, that the arguments advanced by Mr. Bayard have been sufficiently met by the observations of my minister of marine and fisheries, whose reports are embodied in those orders.

It is not disputed that the *Everett Steele* was in Shelburne Harbor on the 25th March and sailed thence without reporting. In consequence of this omission on the master's part his vessel was, on her return to Shelburne, in September, detained by the collector. The master having explained that his presence in the harbor had been occasioned by stress of weather, and that his failure to report was inadvertent, and this explanation having been telegraphed to the minister of marine at Ottawa, the vessel was at once allowed to proceed to sea; her release took place at noon on the day following that of her detention.

In the case of the *Pearl Nelson* it is not denied that nine of her crew were landed in Arichat Harbor at a late hour in the evening of her arrival and before the master had reported to the custom-house. It is obvious that if men were to be allowed to go on shore, under such circumstances, without notification to the authorities, great facilities would be offered for landing contraband goods, and there

can be no question that the master, by permitting his men to land, was guilty of a violation of sections 25 and 180 of the customs act. There seems to be reason to doubt his statement that he was driven into Arichat by stress of weather; but, be this as it may, the fact of his having entered the harbor for a lawful purpose would not carry with it a right to evade the law to which all vessels frequenting Canadian ports are amenable. In this case, as in that of the *Everett Steele*, already referred to, the statement of the master that his offense was due to inadvertence was accepted, and the fine imposed at once remitted.

I observe that in his dispatch relating to the first of these cases Mr. Bayard insists with much earnestness upon the fact that certain "prerogatives" of access to the territorial waters of the Dominion were specially reserved under the convention of 1818 to the fishermen of the United States, and that a vessel entering a Canadian harbor for any purpose coming within the terms of Article 1 of that convention has as much right to be in that harbor as she would have to be upon the high seas, and he proceeds to institute a comparison between the detention of the *Everett Steele* and the wrongful seizure of a vessel on the high seas upon the suspicion of being engaged in the slave trade. Mr. Bayard further calls attention to the special consideration to which, from the circumstances of their profession, the fishermen of the United States are, in his opinion, entitled, and he dwells upon the extent of injury which would result to them if they were debarred from the exercise of any of the rights assured to them by treaty or convention.

I observe that in Sir Julian Pauncefote's letter inclosed in your dispatch it is stated that the secretary of state for foreign affairs wishes to urge upon the Dominion Government the great importance of issuing stringent instructions to its officials not to interfere with any of the privileges expressly reserved to United States fishermen under Article 1 of the convention of 1818.

I trust that the explanations which I have already been able to give in regard to the cases of these vessels will have satisfied you that the facts disclosed do not show any necessity for the issuing of instructions other than those already circulated to the local officials intrusted with the execution of the customs as fishery law.

There is certainly no desire on the part of my Government (nor, I believe, does the conduct of the local officials justify the assumption that such a desire exists) to curtail in any respect the privileges enjoyed by United States fishermen in Canadian waters. It can not on the other hand be contended that because these privileges exist, and are admitted by the Government of the Dominion, those who enjoy them are to be allowed immunity from the regulations to which all vessels resorting to Canadian waters are without exception subjected under the customs act of 1883 and the different statutes relating to the fisheries of the Dominion.

In both of the cases under consideration there was a clear and undoubted violation of the law, and the local officials would have been culpable if they had omitted to notice it. That there was no animus on their part or on that of the Canadian Government is, I think, clearly proved by the promptitude with which the circumstances were investigated and the readiness shown to overlook the offense, and to remit the penalty incurred, as soon as proof was forthcoming that the



offense had been unintentionally committed. In support of this view I would draw your attention to the letter (see inclosure to my dispatch of 29th November) of Mr. Phelan, the consul-general of the United States at Halifax, who has expressed his own satisfaction at the action of the authorities in the case of the *Pearl Nelson* and who also refers to a communication received by him from the Department of State, in which it is stated that the conduct of the assistant commissioner of customs in dealing with two other cases of a somewhat similar complexion "shows a proper spirit."

I have, etc.,

LANSDOWNE.

*Mr. Bayard to Mr. Phelps.*

No. 528.]

DEPARTMENT OF STATE,  
*Washington, February 1, 1887.*

SIR: I received on the 29th ultimo a reply from the British minister at this capital to my notes to him on the 19th and 20th of October last, relative to the cases of the American fishing vessels *Pearl Nelson* and *Everett Steele*.

The note of Sir Lionel West serves only to inclose the communication of the Marquis of Lansdowne to Mr. Stanhope. Whilst the letter of Lord Lansdowne proceeds upon the assumption of grounds never accepted by this Government as the basis of discussion of the rights of our fishermen, and fails to admit the obvious and essential right of American fishermen to resort for purposes not abusive of the ancient privileges guaranteed by the treaty of 1818, in the Canadian bays and harbors, yet I am glad to see that the tone of his discussion indicates the growth of a disposition to consider the case of the American fishermen in a more friendly light than heretofore in the discussions of the past season.

The letters will be communicated to Congress as supplementary to the information heretofore laid before them by the President.

I am, etc.,

T. F. BAYARD.

*Mr. Bayard to Mr. Phelps.*

No. 536.]

DEPARTMENT OF STATE,  
*Washington, February 8, 1887.*

SIR: I have to acknowledge your dispatch of the 27th ultimo, No. 423, which was accompanied by a copy of the note to you of the late Lord Iddesleigh, under date of December 16, 1886, and also one from Sir Julian Pauncefote, dated January 14, 1887, and also a copy of your note to the Marquis of Salisbury under date of January 26 ultimo.

I desire to express my entire satisfaction with the position correctly assumed and admirably and logically sustained by you in this relation.

Your telegrams of the 5th instant and of yesterday, with reference to the same question, have been received.

As part of the general case, and as bearing with unusual clearness upon the Canadian claims of construction of the convention of 1818, I transmit herewith copies of a note from Sir Lionel West, dated the 28th ultimo, inclosing a dispatch from Lord Lansdowne, governor-general of Canada, to Mr. Stanhope, dated November 9, 1886, which is accompanied by reports of the committee of the privy council for Canada, and of Mr. Thompson, the minister of Justice at Ottawa.

It may be noted that this reply of the British minister at this capital to my note to him of May 20, 1886, is dated on the 28th ultimo, giving some eight months for the completion of the circuit of correspondence.

At page 15 of the printed inclosure and in the last paragraph will be found the explicit avowal of claim by the Canadian Government to employ the convention of 1818 as an instrument of interference with the exercise of open-sea fishing by citizens of the United States, and to give it such a construction as will enable the fishermen of the provinces better to compete at less "disadvantage in the markets of the United States" in the pursuit of the deep-sea fisheries.

At the outset of this discussion, in my note to Sir Lionel West, of May 10, 1886, I said:

"The question, therefore, arises whether such a construction is admissible as would convert the treaty of 1818 from being an instrumentality for the protection of the inshore fisheries along the described parts of the British American coasts into a pretext or means of obstructing the business of deep-sea fishing by citizens of the United States, and of interrupting and destroying the commercial intercourse that since the treaty of 1818, and independent of any treaty whatever, has grown up and now exists under the concurrent and friendly laws and mercantile regulations of the respective countries."

When I wrote this I hardly expected that the motives I suggested, rather than imputed, would be admitted by the authorities of the provinces, and was entirely unprepared for a distinct avowal thereof, not only as regards the obstruction of deep-sea fishing operations by our fishermen, but also in respect of their independent commercial intercourse, yet it will be seen that the Canadian minister of justice avers that it is "most prejudicial" to the interests of the provinces "that United States fishermen should be permitted to come into their harbors on any pretext."

The correspondence now sent to you, together with others relating to the same subject that has taken place since the President's message of December 8, communicating the same to Congress, will be laid before Congress without delay, and will assist the two houses materially in the legislation proposed for the security of the rights of American fishing vessels under treaty and international law and comity.

I am, etc.,

T. F. BAYARD.

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*The Marquis of Salisbury to Mr. White.*

FOREIGN OFFICE, *March 24, 1887.*

SIR: In a note of the 3d December last, addressed to my predecessor, Mr. Phelps was good enough to transmit a copy of a dispatch from Mr. Bayard, dated the 15th of the preceding month, together



with an outline of a proposed *ad interim* arrangement "for the settlement of all questions in dispute in relation to the fisheries on the northeastern coasts of British North America."

Her Majesty's Government have given their most careful consideration to that communication, and it has also received the fullest examination at the hands of the Canadian Government, who entirely share the satisfaction felt by Her Majesty's Government at any indication on the part of that of the United States of a disposition to make arrangements which might tend to put the affairs of the two countries on a basis more free from controversy and misunderstanding than unfortunately exists at present. The Canadian Government, however, deprecate several passages in Mr. Bayard's dispatch which attribute unfriendly motives to their proceedings, and in which the character and scope of the measures they have taken to enforce the terms of the convention of 1818 are, as they believe, entirely misapprehended.

They insist that nothing has been done on the part of the Canadian authorities since the termination of the Treaty of Washington in any such spirit as that which Mr. Bayard condemns, and that all that has been done with a view to the protection of the Canadian fisheries has been simply for the purpose of guarding the rights guaranteed to the people of Canada by the convention of 1818, and of enforcing the statutes of Great Britain and of Canada in relation to the fisheries. They maintain that such statutes are clearly within the powers of the respective Parliaments by which they were passed, and are in conformity with the convention of 1818, especially in view of the passage of the convention which provides that the American fishermen shall be under such restrictions as shall be necessary to prevent them from abusing the privileges thereby reserved to them.

There is a passage in Mr. Bayard's dispatch to which they have particularly called the attention of Her Majesty's Government. It is the following:

"The numerous seizures made have been of vessels quietly at anchor in established ports of entry, under charges which up to this day have not been particularized sufficiently to allow of intelligent defense; not one has been condemned after trial and hearing, but many have been fined, without hearing or judgment, for technical violation of alleged commercial regulations, although all commercial privileges have been simultaneously denied to them."

In relation to this paragraph the Canadian Government observes that the seizures of which Mr. Bayard complains have been made upon grounds which have been distinctly and unequivocally stated in every case; that, although the nature of the charges has been invariably specified and duly announced, those charges have not in any case been answered; that ample opportunity has in every case been afforded for a defense to be submitted to the executive authorities, but that no defense has been offered beyond the mere denial of the right of the Canadian Government; that the courts of the various provinces have been open to the parties said to have been aggrieved, but that not one of them has resorted to those courts for redress. To this it is added that the illegal acts which are characterized by Mr. Bayard as "technical violations of alleged commercial regulations," involved breaches, in most of the cases not denied by the persons who had committed them, of established commercial regulations which,

far from being especially directed or enforced against citizens of the United States, are obligatory upon all vessels (including those of Canada herself) which resort to the harbors of the British North American coast.

I have thought it right, in justice to the Canadian Government, to embody in this note almost in their own terms their refutation of the charges brought against them by Mr. Bayard; but I would prefer not to dwell on this part of the controversy, but to proceed at once to the consideration of the six articles of Mr. Bayard's memorandum in which the proposals of your Government are embodied.

Mr. Bayard states that he is "encouraged in the expectation that the propositions embodied in the memorandum will be acceptable to Her Majesty's Government, because, in the month of April, 1866, Mr. Seward, then Secretary of State, sent forward to Mr. Adams, at that time United States minister in London, the draft of a protocol which, in substance, coincides with the first article of the proposal now submitted."

Article 1 of the memorandum no doubt to some extent resembles the draft protocol submitted in 1866 by Mr. Adams to Lord Clarendon (of which I inclose a copy for convenience of reference), but it contains some important departures from its terms.

Nevertheless, the article comprises the elements of a possible accord, and if it stood alone I have little doubt that it might be so modeled, with the concurrence of your Government, as to present an acceptable basis of negotiation to both parties. But, unfortunately, it is followed by other articles which, in the view of Her Majesty's Government and that of Canada, would give rise to endless and unprofitable discussion, and which, if retained, would be fatal to the prospect of any satisfactory arrangement, inasmuch as they appear as a whole to be based on the assumption that upon the most important points in the controversy the views entertained by Her Majesty's Government and that of Canada are wrong, and those of the United States Government are right, and to imply an admission by Her Majesty's Government and that of Canada that such assumption is well founded.

I should extend the present note to an undue length were I to attempt to discuss in it each of the articles of Mr. Bayard's memorandum, and to explain the grounds on which Her Majesty's Government feel compelled to take exception to them. I have therefore thought it more convenient to do so in the form of a counter-memorandum, which I have the honor to inclose, and in which will be found, in parallel columns, the articles of Mr. Bayard's memorandum, and the observations of Her Majesty's Government thereon.

Although, as you will perceive on a perusal of those observations, the proposal of your Government as it now stands is not one which could be accepted by Her Majesty's Government, still Her Majesty's Government are glad to think that the fact of such a proposal having been made affords an opportunity which, up to the present time, had not been offered for an amicable comparison of the views entertained by the respective Governments.

The main principle of that proposal is that a mixed commission should be appointed for the purpose of determining the limits of those territorial waters within which, subject to the stipulations of the con-



vention of 1818, the exclusive right of fishing belongs to Great Britain.

Her Majesty's Government cordially agree with your Government in believing that a determination of these limits would, whatever may be the future commercial relations between Canada and the United States, either in respect of the fishing industry or in regard to the interchange of other commodities, be extremely desirable, and they will be found ready to co-operate with your Government in effecting such a settlement.

They are of opinion that Mr. Bayard was justified in reverting to the precedent afforded by the negotiations which took place upon this subject between Great Britain and the United States after the expiration of the reciprocity treaty of 1854, and they concur with him in believing that the draft protocol communicated by Mr. Adams in 1866 to the Earl of Clarendon affords a valuable indication of the lines upon which a negotiation directed to the same points might now be allowed to proceed.

Mr. Bayard has himself pointed out that its concluding paragraph, to which Lord Clarendon emphatically objected, is not contained in the first article of the memorandum now forwarded by him; but he appears to have lost sight of the fact that the remaining articles of that memorandum contain stipulations not less open to objection, and calculated to affect even more disadvantageously the permanent interests of the Dominion in the fisheries adjacent to its coasts.

There can be no objection on the part of Her Majesty's Government to the appointment of a mixed commission, whose duty it would be to consider and report upon the matters referred to in the three first articles of the draft protocol communicated to the Earl of Clarendon by Mr. Adams in 1866.

Should a commission instructed to deal with these subjects be appointed at an early date, the result of its investigations might be reported to the Governments affected without much loss of time. Pending the termination of the questions which it would discuss, it would be indispensable that United States fishing vessels entering Canadian bays and harbors should govern themselves not only according to the terms of the convention of 1818, but by the regulations to which they, in common with other vessels, are subject while within such waters.

Her Majesty's Government, however, have no doubt that every effort will be made to enforce those regulations in such a manner as to cause the smallest amount of inconvenience to fishing vessels entering Canadian ports under stress of weather, or for any other legitimate purpose.

But there is another course which Her Majesty's Government are inclined to propose, and which, in their opinion, would afford a temporary solution of the controversy equally creditable to both parties.

Her Majesty's Government have never been informed of the reasons which induced the Government of the United States to denounce the fishery articles of the treaty of Washington, but they have understood that the adoption of that course was in a great degree the result of a feeling of disappointment at the Halifax award, under which the United States were called upon to pay the sum of 1,100,000*l.*, being the estimated value of the benefits which would accrue to them, in

excess of those which would be derived by Canada and Newfoundland from the operation of the fishery articles of the treaty.

Her Majesty's Government and the Government of Canada, in proof of their earnest desire to treat the question in a spirit of liberality and friendship, are now willing to revert for the coming fishing season, and, if necessary, for a further term, to the condition of things existing under the treaty of Washington, without any suggestion of pecuniary indemnity.

This is a proposal which, I trust, will commend itself to your Government as being based on that spirit of generosity and good will which should animate two great and kindred nations, whose common origin, language, and institutions constitute as many bonds of amity and concord.

I have, etc.,

SALISBURY.

[Inclosure No. 1.]

Draft protocol communicated by Mr. Adams to the Earl of Clarendon in 1866.

[Inclosure No. 2.]

*Ad interim arrangement proposed by the United States Government.*

#### ARTICLE I.

#### *Observations on Mr. Bayard's memorandum.*

Whereas, in the first article of the convention between the United States and Great Britain, concluded and signed in London on the 20th October, 1818, it was agreed between the high contracting parties "that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors, and creeks, from Mount Joly on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Com-

The most important departure in this article from the Protocol of 1866 is the interpolation of the stipulation, "that the bays and harbors from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbors is permitted by said article, are hereby agreed to be taken to be such harbors as are 10, or less than 10, miles in width, and the distance of 3 marine miles from such bays and harbors shall be measured from a straight line drawn across the bay or harbor in the part nearest the entrance at the first point where the width does not exceed 10 miles."

This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing-grounds of territorial waters which, by the law of nations, have been invariably regarded both in Great Britain and the United



pany; and that the American fishermen shall also have liberty forever to dry and cure fish in any of the unsettled bays, harbors, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portion so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbors of His Britannic Majesty's dominions in America not included within the above-mentioned limits: *Provided, however*, That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a mixed commission for the following purposes, namely:

(1) To agree upon and establish by a series of lines the limits which shall separate the exclusive from the common right of

States as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost landlocked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute 14 and 15 Vict., cap. 63; and *Mouat v. McPhee*, 5 Sup. Court of Canada Reports, p. 66.)

The convention with France in 1839, and similar conventions with other European Powers, form no precedents for the adoption of a 10-mile limit. Those conventions were doubtless passed with a view to the geographical peculiarities of the coast to which they related. They had for their object the definition of boundary-lines which, owing to the configuration of the coast, perhaps could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to the territorial waters of Canada.

This is shown by the fact that in the French convention the whole of the oyster-beds in Granville Bay, otherwise called the Bay of Cancale, the entrance of which exceeds 10 miles in width, were regarded as French, and the enjoyment of them is reserved to the local fishermen.

A reference to the action of the United States Government, and to the admission made by their statesmen in regard to bays on

fishing on the coast and in the adjacent waters of the British North American Colonies, in conformity with the first article of the convention of 1818, except that the bays and harbors from which American fishermen are in the future to be excluded, save for the purposes for which entrance into bays and harbors is permitted by said article, are hereby agreed to be taken to be such bays and harbors as are 10 or less than 10 miles in width, and the distance of 3 marine miles from such bays and harbors shall be measured from a straight line drawn across the bay or harbor, in the part nearest the entrance, at the first point where the width does not exceed 10 miles, the said lines to be regularly numbered, duly described, and also clearly marked on charts prepared in duplicate for the purpose.

(2) To agree upon and establish such regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said convention to the fishermen of the United States.

(3) To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment, with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted:

the American coasts, strengthens this view; and the case of the English ship *Grange* shows that the Government of the United States in 1793 claimed Delaware Bay as being within territorial waters.

Mr. Bayard contends that the rule which he asks to have set up was adopted by the umpire of the commission appointed under the convention of 1853 in the case of the United States fishing schooner *Washington* that it was by him applied to the Bay of Fundy, and that it is for this reason applicable to other Canadian bays.

It is submitted, however, that as one of the headlands of the Bay of Fundy is in the territory of the United States any rules of international law applicable to that bay are not therefore equally applicable to other bays the headlands of which are both within the territory of the same power.

The second paragraph of the first article does not incorporate the exact language of the convention of 1818. For instance, the words, "and for no other purpose whatever," should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words, "as may be necessary to prevent," should be inserted, "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved," etc.

To make the language conform correctly to the convention of 1818, several other verbal alterations, which need not be enumerated here, would be necessary.



*Provided, however,* That the limits, restrictions, and regulations which may be agreed upon by the said commission shall not be final, nor have any effect, until so jointly confirmed and declared by the United States and Her Majesty the Queen of Great Britain, either by treaty or by laws mutually acknowledged.

## ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper colonial and other British officers to abstain from seizing or molesting fishing vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the treaty of 1818 the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

## ARTICLE III.

For the purpose of executing Article I of the convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruise during the fishing season on the southern coasts of Nova Scotia.

This article would suspend the operation of the statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offenses connected with fishing, but as to customs, harbors, and shipping, and would give to the fishing vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class or of any other nation. Such vessels would, for example, be free from the duty of reporting at the customs on entering a Canadian harbor, and no safeguard could be adopted to prevent infraction of the customs laws by any vessel asserting the character of a fishing vessel of the United States.

Instead of allowing to such vessels merely the restricted privileges reserved by the convention of 1818, it would give them greater privileges than are enjoyed at the present time by any vessels in any part of the world.

This article would deprive the courts in Canada of their jurisdiction, and would vest that jurisdiction in a tribunal not bound by legal principles, but clothed with supreme authority to decide on most important rights of the Canadian people.

It would submit such rights to the adjudication of two naval offi-

Whenever a fishing vessel of the United States shall be seized for violating the provisions of the aforesaid convention by fishing or preparing to fish within 3 marine miles of any of the coasts, bays, creeks, and harbors of Her Britannic Majesty's dominions included within the limits within which fishing is by the terms of the said convention renounced, such vessel shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of different nationality, shall hear and examine into the facts of the case. Should the said commanding officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the vice-admiralty court at Halifax. If, however, the said commanding officers should differ in opinion, they shall name some third person to act as umpire between them, and should they be unable to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the umpire.

#### ARTICLE IV.

The fishing vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies; and such privileges shall be exer-

cers, one of them belonging to a foreign country, who, if they should disagree and be unable to choose an umpire, must refer the final decision of the great interests which might be at stake to some person chosen by lot.

If a vessel charged with infringement of Canadian fishing rights should be thought worthy of being subjected to a "judicial examination," she would be sent to the vice-admiralty court at Halifax, but there would be no redress, no appeal, and no reference to any tribunal if the naval officers should think proper to release her.

It should, however, be observed that the limitation in the second sentence of this article of the violations of the convention which are to render a vessel liable to seizure could not be accepted by Her Majesty's Government.

For these reasons, the article in the form proposed is inadmissible, but Her Majesty's Government are not indisposed to agree to the principle of a joint inquiry by the naval officers of the two countries in the first instance, the vessel to be sent for trial at Halifax if the naval officers do not agree that she should be released. They fear, however, that there would be serious practical difficulties in giving effect to this arrangement, owing to the great length of coast and the delays which must in consequence be frequent in securing the presence at the same time and place of the naval officers of both Powers.

This article is also open to grave objection. It proposes to give the United States fishing vessels the same commercial privileges as those to which other vessels of the United States are entitled, although such privileges are expressly renounced by the convention of 1818 on behalf of fishing



cised subject to the same rules and regulations and payment of the same port charges as are prescribed for other vessels of the United States.

vessels, which were thereafter to be denied the right of access to Canadian waters for any purpose whatever, except those of shelter, repairs, and the purchase of wood and water. It has frequently been pointed out that an attempt was made, during the negotiations which preceded the convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters, and that this attempt was successfully resisted. In spite of this fact, it is proposed, under this article, to declare that the convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies in the harbors of the Dominion.

#### ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States fishing vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the high contracting parties agree to appoint a joint commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the treaty of 1818, said commission to make awards therefor to the parties injured.

#### ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian customs regulations, and the United States agree to admonish its fishermen to comply with them and co-operate in securing their enforcement.

By this article it is proposed to give retrospective effect to the unjustified interpretation sought to be placed on the convention by the last preceding article.

It is assumed, without discussion, that all United States fishing vessels which have been seized since the expiration of the treaty of Washington have been illegally seized leaving as the only question still open for consideration the amount of the damages for which the Canadian authorities are liable.

Such a proposal appears to Her Majesty's Government quite inadmissible.

This article calls for no remark.

*Sir L. S. Sackville West to Mr. Bayard.*

WASHINGTON, April 4, 1887.

(Received April 6.)

SIR: With reference to my note of the 28th of January last, I have the honor to inclose to you herewith copy of an approved report of a committee of the privy council of Canada, embodying a report of the minister of marine and fisheries on the cases of the United States fishing vessels *Pearl Nelson* and *Everett Steele*.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure.]

*Certified copy of a report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council, on the 15th January, 1887.*

The committee of the privy council have had under consideration a dispatch dated November 22, 1886, from the secretary of state for the colonies, inclosing letters from Mr. Secretary Bayard, bearing date 19th October, and referring to the cases of the schooners *Pearl Nelson* and *Everett Steele*.

The minister of marine and fisheries, to whom the dispatch and inclosures were referred, reports that in reply to a telegram from the secretary of state for the colonies, an order in council, passed on the 18th November last, containing a full statement of facts regarding the detention of the above-named vessels, was transmitted to Mr. Stanhope; it will not therefore be necessary to repeat this statement in the present report.

The minister observes in the first place that the two fishing schooners *Everett Steele* and *Pearl Nelson* were not detained for any alleged contravention of the treaty of 1818 or the fishery laws of Canada, but solely for the violation of the customs law. By this law all vessels of whatever character are required to report to the collector of customs immediately upon entering port, and are not to break bulk or land crew or cargo before this is done.

The minister states that the captain of the *Everett Steele* had on a previous voyage entered the port of Shelburne on the 25th March, 1886, and after remaining for eight hours had put to sea again without reporting to the customs. For this previous offense he was, upon entering Shelburne Harbor on the 10th September last, detained and the facts were reported to the minister of customs at Ottawa. With these facts was coupled the captain's statement that on the occasion of the previous offense he had been misled by the deputy harbor-master, from whom he understood that he would not be obliged to report unless he remained in the harbor for twenty-four hours. The minister accepted the statement in excuse and the *Everett Steele* was allowed to proceed on her voyage.

The customs laws had been violated; the captain of the *Everett Steele* admitted the violation, and for this the usual penalty could have been legally enforced. It was, however, not enforced, and no detention of the vessel occurred beyond the time necessary to report the facts to headquarters and obtain the decision of the minister.

The minister submits that he can not discern in this transaction any attempt to interfere with the privileges of United States fishing



vessels in Canadian waters or any sufficient case for the protest of Mr. Bayard.

The minister states that in the case of the *Pearl Nelson* no question was raised as to her being a fishing vessel or her enjoyment of any privileges guarantied by the treaty of 1818. Her captain was charged with a violation of the customs law, and of that alone, by having, on the day before reporting to the collector of customs at Arichat, landed ten of his crew.

This he admitted upon oath. When the facts were reported to the minister of customs he ordered that the vessel might proceed upon depositing \$200, pending a fuller examination. This was done, and the fuller examination resulted in establishing the violation of the law and in finding that the penalty was legally enforceable. The minister, however, in consideration of the alleged ignorance of the captain as to what constituted an infraction of the law, ordered the deposit to be refunded.

In this case there was a clear violation of Canadian law; there was no lengthened detention of the vessel; the deposit was ultimately remitted, and the United States consul-general at Halifax expressed himself by letter to the minister as highly pleased at the result.

The minister observes that in this case he is at a loss to discover any well-founded grievance or any attempted denial of or interference with any privileges guarantied to United States fishermen by the treaty of 1818.

The minister further observes that the whole argument and protest of Mr. Bayard appears to proceed upon the assumption that these two vessels were subjected to unwarrantable interference in that they were called upon to submit to the requirements of Canadian customs law, and that this interference was prompted by a desire to curtail or deny the privileges of resort to Canadian harbors for the purposes allowed by the treaty of 1818.

It is needless to say that this assumption is entirely incorrect.

Canada has a very large extent of sea-coast with numberless ports, into which foreign vessels are constantly entering for purposes of trade. It becomes necessary in the interests of legitimate commerce that stringent regulations should be made by compulsory conformity to which illicit traffic should be prevented. These customs regulations all vessels of all countries are obliged to obey, and these they do obey, without in any way considering it a hardship. United States fishing vessels come directly from a foreign and not distant country, and it is not in the interests of legitimate Canadian commerce that they should be allowed access to our ports without the same strict supervision as is exercised over all other foreign vessels, otherwise there would be no guaranty against illicit traffic of large dimensions to the injury of honest trade and the serious diminution of the Canadian revenue. United States fishing vessels are cheerfully accorded the right to enter Canadian ports for the purpose of obtaining shelter, repairs, and procuring wood and water; but in exercising this right they are not, and can not be, independent of the customs laws. They have the right to enter for the purposes set forth, but there is only one legal way in which to enter, and that is by conformity to the customs regulations.

When Mr. Bayard asserts that Captain Forbes had as much right to be in Shelburne Harbor seeking shelter and water "as he would

have had on the high seas carrying on under shelter of the flag of the United States legitimate commerce," he is undoubtedly right, but when he declares, as he does in reality, that to compel Captain Forbes, in Shelburne Harbor, to conform to Canadian customs regulations, or to punish him for their violation, is a more unwarrantable stretch of power than "that of seizure on the high seas of a ship unjustly suspected of being a slaver," he makes a statement which carries with it its own refutation.

Customs regulations are made by each country for the protection of its own trade and commerce, and are enforced entirely within its own territorial jurisdiction, while the seizure of a vessel upon the high seas, except under extraordinary and abnormal circumstances, is an unjustifiable interference with the free right of navigation common to all nations.

As to Mr. Bayard's observation that by treatment such as that experienced by the *Everett Steele*, "the door of shelter is shut to American fishermen as a class," the minister expresses his belief that Mr. Bayard can not have considered the scope of such an assertion or the inferences which might reasonably be drawn from it.

If a United States fishing vessel enters a Canadian port for shelter, repairs, or for wood and water, her captain need have no difficulty in reporting her as having entered for one of those purposes, and the *Everett Steele* would have suffered no detention had her captain, on the 25th March, simply reported his vessel to the collector. As it was, the vessel was detained for no longer time than was necessary to obtain the decision of the minister of customs, and the penalty for which it was liable was not enforced. Surely Mr. Bayard does not wish to be understood as claiming for United States fishing vessels total immunity from all customs regulations, or as intimating that if they can not exercise their privileges unlawfully they will not exercise them at all.

Mr. Bayard complains that the *Pearl Nelson*, although seeking to exercise no commercial privileges, was compelled to pay commercial fees, such as are applicable to trading vessels. In reply the minister observes that the fees spoken of are not "commercial fees;" they are harbor-master's dues, which all vessels making use of legally constituted harbors are, by law, compelled to pay, and entirely irrespective of any trading that may be done by the vessel.

The minister observes that no single case has yet been brought to his notice in which any United States fishing vessel has in any way been interfered with for exercising any rights guaranteed under the treaty of 1818 to enter Canadian ports for shelter, repairs, wood, or water; that the Canadian Government would not countenance or permit any such interference, and that in all cases of this class when trouble has arisen it has been due to a violation of Canadian customs law, which demands the simple legal entry of the vessel as soon as it comes into port.

The committee concurring in the above report recommend that your excellency be moved to transmit a copy thereof to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
Clerk Privy Council.



*Special Instructions to Fishery Officers in command of Fisheries' Protection Vessels.*

DEPARTMENT OF FISHERIES, CANADA,  
OTTAWA, 16th April, 1887.

SIR: In reference to the letter of this Department, dated 16th March, 1886, I have to intimate to you that during the present season, and until otherwise ordered, you will be guided in the performance of the duties entrusted to you by the instructions contained in that letter.

I have every reason for believing that these have been executed with efficiency and firmness, as well as with discretion, and a due regard to the rights secured by Treaty to foreign fishing vessels resorting to Canadian waters.

I desire, however, to impress upon you that, in carrying out those instructions and protecting Canadian inshore fisheries, you should be most careful not to strain the interpretation of the law in the direction of interference with the rights and privileges remaining to United States' fishermen in Canadian waters under the Convention of 1818. To this end, the largest liberty compatible with the full protection of Canadian interests is to be granted United States' fishing vessels in obtaining in our waters, shelter, repairs, wood and water. Care should be taken that while availing themselves of these privileges, such vessels do not engage in any illegal practices, and all proper supervision necessary to accomplish this object is to be exercised, but it is not deemed necessary that in order to effect this an armed guard should be placed on board, or that any reasonable communication with the shore should be prohibited, after the vessel has duly entered, unless sufficient reasons appear for the exercise of such precautions.

In places where United States' fishing vessels are accustomed to come into Canadian waters for shelter only, the Captain of the Cruiser which may be there is authorized to take entry from and grant clearance to the masters of such fishing vessels without requiring them to go on shore for that purpose. Blank forms of entry and clearance are furnished to the Captains of Cruisers; these, after being filled in, are to be forwarded by the Captain of the Cruiser to the Customs Officer of the ports within whose jurisdiction they have been used. In cases of distress, disaster, need of provisions for the homeward voyage, of sickness or death on board a foreign fishing vessel, all needful facilities are to be granted for relief, and both you and your officers will be carrying out the wishes of the Department in courteously and freely giving assistance in such instances.

The above special instructions, while designed with regard to the fullest recognition of all lawful rights and reasonable liberties to which United States' fishermen are entitled in Canadian waters, are not to be construed as authorizing a lax enforcement of the provisions of the laws for the protection of the Canadian fisheries. Fishing, preparing to fish, procuring bait, trading or transshipping of cargoes by United States' fishing vessels within the three-mile limit, are manifest violations of the Convention of 1818, and of the Imperial and Canadian Statutes, and in these cases your instructions which are explicit are to be faithfully followed.

I have, etc.,

(Sd.) GEO. E. FOSTER  
*Minister of Marine and Fisheries.*

*Sir L. S. Sackville West to Mr. Bayard.*

WASHINGTON, May 17, 1887.

(Received May 18.)

SIR: With reference to your notes of the 1st December, 11th November, and 27th January last, I have the honor to inclose herewith copies of dispatches from the governor-general of Canada covering reports of a committee of the privy council respecting the cases of the United States fishing vessels *Mollie Adams*, *Laura Sayward*, *Jennie Seaverns*, and *Sarah H. Prior*, which I have received from the Marquis of Salisbury for communication to the United States Government.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.]

*The Marquis of Lansdowne to Sir Henry Holland.*

GOVERNMENT HOUSE,

Ottawa, April 12, 1887.

SIR: I caused to be referred for the consideration of my Government a copy of your dispatch of the 23d February last transmitting copy of a letter from the foreign office, with its inclosures, respecting the case of the *Sarah H. Prior* and requesting to be furnished with a report upon the alleged conduct of the captain of the Canadian revenue cutter *Critic* on the occasion referred to, and I have now the honor to forward herewith a certified copy of an approved report of a committee of my privy council embodying a statement of Captain McLaren, of the *Critic*, with reference to the circumstances complained of.

I have, etc.,

LANSDOWNE.

[Sub-inclosure.]

*Certified copy of a report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council on the 7th April, 1887.*

The committee of the privy council have had under consideration a dispatch dated 23d February, 1887, from the right honorable the secretary of state for the colonies asking that an investigation may be made into the conduct of the captain of the Canadian cruiser *Critic* as regards the treatment extended to Capt. Thomas McLaughlin, of the U. S. fishing schooner *Sarah H. Prior*, in the harbor of Malpeque, Prince Edward Island, in September last.

The minister of marine and fisheries, to whom the dispatch was referred, submits the following statement of Captain McLaren, of the *Critic*, with reference to the circumstances complained of.

On or about the 14th September, 1886, Captain McLaughlin, of the *Sarah H. Prior*, came on board the government cruiser *Critic* at Malpeque, Prince Edward Island, wanting to know if he would be infringing on the laws by paying the captain of the schooner *John Ingalls* a small sum of money for the recovery of a seine which he said he had lost a few days before, and which had been picked up by the said captain.



I told him that I would not interfere with him if the captain of the *Ingalls* chose to run the risk of taking the matter in his own hands, but that the proper course would be for the captain of the *John Ingalls* to report the matter to the collector of customs, who was also receiver of wrecks, and then if he (Captain McLaughlin) could prove that the seine was his, he could recover it by paying the costs. Captain McLaughlin then said that as the seine was all torn to pieces, he would not bother himself about it.

The captain of the *John Ingalls* did not come to see me about the matter, and I heard nothing of it afterwards.

W. McLAREN.

The committee respectfully advise that your excellency be moved to forward the foregoing statement of Captain McLaren to the right honorable the secretary of state for the colonies in answer to his dispatch of the 23d February last.

JOHN J. MCGEE,  
*Clerk Privy Council.*

[Inclosure No. 2.]

*The Marquis of Lansdowne to Sir H. Holland.*

GOVERNMENT HOUSE,  
*Ottawa, April 2, 1887.*

SIR: I have the honor to inclose herewith a certified copy of a privy council order respecting the case of the United States schooner *Mollie Adams*, which formed the subject of your predecessor's dispatches of the 6th October and 16th December.

I have to express my regret that it should have proved impossible to supply you with the necessary information bearing upon this case at an earlier date. Some time was, however, taken in collecting the evidence embodied in the reports, copies of which accompany the minute, and the occurrence of the general elections for the federal parliament to some extent interrupted the course of business in the public departments and increased the delay.

You will find in the report of my minister of marine and fisheries, and in the inclosures appended to it, a full and, I think, satisfactory reply to the whole of the charges made by the Government of the United States against the conduct of the Canadian officials concerned in the matter of the *Mollie Adams*.

I would venture to draw your especial attention to the concluding passages of the minister's report, in which he earnestly deprecates the manner in which in this, as well as in other cases in which disputes have arisen under conditions of a similar character, the Government of the United States has not hesitated to adopt without any inquiry, and to support with the whole weight of its authority, *ex parte* charges entirely unconfirmed by collateral evidence, and unaccompanied by any official attestation.

In view of the fact that owing to the action of the Government of the United States in terminating the fishery clauses of the treaty of Washington, a large body of American fishermen have suddenly found themselves excluded from waters to which they had for many

years past resorted without molestation, and that the duty of thus excluding them has been thrown upon a newly constituted force of fishery police, necessarily without experience of the difficult and delicate duties which it is called upon to perform, there would be no cause for surprise if occasional cases of hardship or of overzealous action upon the part of the local authorities engaged in protecting the interests of the Dominion were to be brought to light. It is the earnest desire of my government to guard against the occurrence of any such cases, to deal in a spirit of generosity and forbearance with United States fishermen resorting to Canadian waters in the exercise of their lawful rights, and to take effectual measures for preventing arbitrary or uncalled-for interference on the parts of its officials with the privileges allowed to foreign fishermen under the terms of the convention of 1818.

The difficulty of acting in such a spirit must, however, be greatly increased by the course which has been pursued in this and in numerous other cases already brought to your notice in founding not only the most urgent remonstrances, but the most violent and offensive charges and the most unjust imputation of motives upon complaints such as that put forward by the captain of the *Mollie Adams*, a person so illiterate that he appears not to have been qualified to make out the ordinary entry papers on his arrival in a Canadian port, but whose statements, many of which bear upon the face of them evidence of their untrustworthiness, appear to have been accepted *in globo* without question by the Secretary of State.

You will, I cannot help thinking, concur in the opinion expressed in the minister's report that such hasty and indiscriminate accusations can only have the effect of prejudicing and embittering public feeling in both countries, and of retarding the prospect of a reasonable settlement of the differences which have unfortunately arisen between them upon these subjects.

I have, etc.,

LANSDOWNE.

[Sub-inclosure.]

*Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council on the 31st March, 1887.*

The committee of the privy council have had under consideration a dispatch dated 6th October, 1886, from the right honorable the secretary of state for the colonies, transmitting a copy of a letter from the foreign office inclosing copy of a dispatch from Her Majesty's minister at Washington with a note from the Secretary of State of the United States, calling attention to the alleged refusal of the collector of customs at Port Mulgrave, Nova Scotia, to allow the master of the United States fishing vessel *Mollie Adams* to purchase barrels to hold a supply of water for the return voyage, and also a further dispatch dated 16th December, 1886, referring to the same schooner, the *Mollie Adams*, and her alleged treatment at Malpeque, Prince Edward Island, and Port Medway, Nova Scotia, and requesting an early report on the circumstances of this case.

The minister of marine and fisheries to whom the said dispatches and inclosures were referred submits the following report thereon:

Mr. Bayard's note of the 10th September calls attention to the



alleged refusal of the collector of customs at Port Mulgrave, Nova Scotia, to allow the master of the *Mollie Adams* to purchase barrels to hold a supply of water for which the vessel had put into port. The report of the subcollector of customs at Port Mulgrave, which is hereto annexed, and which he expresses his readiness to verify upon oath, shows that the *Mollie Adams* was fitted out with a water-tank which was reported as leaking, that the collector offered to borrow barrels for carrying the water on board if the tank were made tight, and even offered to send a man on board to perform this work; that while the captain of the schooner and he were in conversation one of the crew brought the information that the cook had succeeded in calking the tank.

That thereupon the subcollector borrowed the seven barrels, with which the crew supplied water for their vessel; that the barrels were returned to the collector, and the captain appeared well pleased with what had been done. The good will of the subcollector is also shown in his giving the men a letter to his superior officer, in explanation of the circumstances, and recommended that the purchase of barrels be allowed, a step which was rendered unnecessary by the arrangements later made.

The subcollector in answer to his inquiry as to what had become of the water barrels in use on board the vessel was informed that they had been filled with mackerel. This answer goes to prove that Mr. Murray was acting strictly within the scope of his duty in ascertaining that the barrels sought to be purchased were not to be used for an illicit purpose.

The colonial secretary's dispatch of the 16th December, 1886, refers to the same schooner, the *Mollie Adams*, and her alleged treatment at Malpeque, Prince Edward Island, and Port Medway, Nova Scotia.

In this case Mr. Bayard's representations are based solely upon a letter written to him by the captain of the vessel under date the 12th November, which is unsupported by any other evidence, and upon the strength of which Mr. Bayard proceeds to charge the Canadian authorities with "churlish and inhospitable treatment," and with exhibiting a coldness and rudeness of conduct at variance with the hospitable feelings of common humanity.

The minister of marine and fisheries submits, as a complete reply to the allegations contained in Captain Jacob's letter—(1) The statement of the collector of customs at Malpeque, Prince Edward Island, (2) the statement of Captain McLaren, of the Canadian cruiser *Critic*, and (3) the report of the collector of customs at Port Medway.

The two former officers, although giving their reports without concert, agree upon the main points at issue, and the statements of all three are clear, straightforward, and reasonable, and in marked contrast to the sensational and improbable story related by Captain Jacobs.

Captain Jacobs declares that on or about the 26th September last, during very heavy weather, he fell in with the bark *Neskilita*, which had run on a bar at Malpeque Harbor and become a total wreck. That he took off the crew, seventeen in number, at 12 o'clock at night, carried them to his own vessel, fed them for three days, and then gave them \$60 with which to pay their fare home, and provisions to last them on their way. He states that the captain of the Canadian cruiser *Critic* came on board, was told the circumstances, but offered

no assistance, and that no one on shore would take the wrecked men unless he became responsible for the payment of their board.

The collector at Malpeque in his report says that early on the morning after the wreck, so soon as the news reached him he repaired to the harbor to see what assistance could be given; that he then met the captain of the *Neskilita* in company with Captain Jacobs, and was told by the latter that the crew of the wrecked vessel were comfortably cared for on his vessel, and that nothing more could be done.

Captain McLaren, of the *Critic*, says that he at once visited the *Mollie Adams* and was told by Captain Jacobs that "he had made all arrangements for the crew."

The collector and Captain McLaren agree in stating from information gathered by them that the crew of the wrecked vessel came to shore in their own boat unassisted, and after boarding a Nova Scotia vessel were invited by Captain Jacobs, with whom the captain of the *Neskilita* had beforetime sailed out of Gloucester, to go on board the *Mollie Adams*.

The collector was asked by the captain of the *Neskilita* if he would assist himself and crew to their homes, and answered that he could not unless assured that they themselves were without means for that purpose, in which case he would have to telegraph to Ottawa for instructions. The captain of the *Neskilita* made no further application.

The minister observes that it is the practice of the Dominion Government to assist shipwrecked and destitute sailors, in certain cases of great hardship, to their destination or homes, but in all cases it must be clear that they are destitute, and the application for assistance must be made to Ottawa through the collector of customs. Had such an application been made by the captain of the *Neskilita* it would have received due consideration.

In answer to the charge that board could not be obtained for the wrecked crew, it is stated by Captain McLaren that the crew of a United States vessel wrecked about the same time found no difficulty in getting board and that the captain of the *Neskilita* had himself arranged to board with the collector, who expressed surprise at his failing to come.

Captain Jacobs complains that he was not allowed to land from his vessel the material saved from the wreck. To this charge the collector replies that he received no intimation of any wrecked material except the crew's luggage being on board the *Mollie Adams*, and Captain Jacobs made no request to him regarding the landing of wrecked material, and that he (the collector) gave all assistance in his power to the captain of the *Neskilita* in saving material from the wreck.

It was subsequently discovered that Captain Jacobs had on board the *Mollie Adams* a seine from the wrecked vessel belonging to the underwriters, for taking care of which, when obliged to give it up, Captain Jacobs claimed and was paid the sum of \$10.

Captain Jacobs states that he was put to a loss of ten days' fishing by his detention with the *Neskilita*. The reports of both the collector and Captain McLaren agree in giving a very different and sufficient reason, viz, very bad weather and consequent inability to fish, a disability experienced by the whole fishing fleet at that time anchored in Malpeque.



The second complaint of Mr. Bayard is that when Captain Jacobs, experiencing a dearth of provisions as a consequence of his charitable action, shortly after put into Port Medway and asked to purchase half a barrel of flour and enough provisions to take him home, the collector, "with full knowledge of all the circumstances," refused the request and threatened him with seizure if he bought anything whatever.

The collector's report, hereto annexed, shows that Captain Jacobs entered his port on the 25th October, fully one month after the occurrence at Malpeque; that in entering he made affirmation that he called for shelter and repairs, and for no "other purpose whatever;" that just before leaving he asked permission to purchase half a barrel of flour, and when asked by the collector if he was without provisions, he replied that he was not, adding that he had "a good supply of all kinds of provisions except flour, and enough of that to last him home unless he met some unusual delay."

Under these circumstances the collector did not give the permission asked, but he made no threat of seizure of vessel or imposition of penalty.

Mr. Bayard supports the complaint of Captain Jacobs that he was charged fees for entering his vessel at Canadian customs, and that these fees varied at different ports, being, for instance, 15 cents at Souris, Prince Edward Island, 50 cents at Port Mulgrave, and 50 cents at Port Hood, at which latter port Captain Jacobs sent his brother to enter for him, but was informed that his entry was illegal and that he, as master, must himself enter his vessel. He complains of being obliged to pay twice, once for his brother's entry and once for his own.

The minister states with regard to this that no collector of customs in Canada is authorized to charge a fee for entering or clearing a vessel, nor for any papers necessary to do this. Sailing masters, however, who are unused to the law, or not competent to make out their papers, are in the habit of employing persons as customs brokers to make out their papers for them, and for this service these brokers charge a small fee. These are not Government officers nor under Government control, and their services are voluntarily paid for by those who employ them. The small fees of which Captain Jacobs complains need not have been paid by him if he had been willing or qualified to make out his own papers. That he was not so willing or qualified and that he employed a broker to make out his papers is conclusively shown by the following telegram received from the collector at Port Hood, the charges at which port Mr. Secretary Bayard so vigorously denounces.

[Copies of telegrams.]

*"Deputy minister of fisheries to collector, Port Hood, Nova Scotia.*

*"OTTAWA, March 16, 1887.*

*"Did you during last season exact from Captain Solomon Jacobs, of schooner Mollie Adams, any charge for reporting, or other service at Port Hood? If so, please state amount received and for what."*

*"Collector, Port Hood, to deputy minister of fisheries.*

*"PORT HOOD, NOVA SCOTIA, March 16, 1887.*

"Solomon Jacobs, of schooner *Mollie Adams*, sent one of his crew to report 13th September last; he made a report. I told him, however, that the report should be made by the master. A few hours afterwards Jacobs himself came and reported. They got Dan. McLennan, who is now in Halifax, to write out the reports. I believe he charged them 25 cents each for brokerage. No other charges whatever were made."

The minister states that he has no doubt that the other payments at customs ports alluded to by Mr. Bayard were made for services rendered Captain Jacobs by persons making out his entry papers, and which he does not appear to have been qualified to do himself.

With reference to Mr. Bayard's reiteration of Captain Jacobs's complaint that in different harbors he was obliged to pay a different scale of dues, the minister of marine submits that in Canada there are distinct classes of harbors. Some are under the control of a commission appointed wholly or in part by the Government, under whose management improvements are made and which regulates, subject to the approval of Government, the harbor dues which are to be paid by all vessels entering such ports and enjoying the advantages therein provided.

Others are natural harbors in great part unimproved, whose limits are generally defined by order in council and for which a harbor-master is appointed by Government, to whom all vessels entering pay certain nominal harbor-master's fees, which are regulated by a general act of parliament, and which constitute a fund out of which the harbor-master is paid a small salary for his services in maintaining order within the harbor. The port of St. John, New Brunswick, is entirely under municipal control and has its own stated and uniform scale of charges.

Harbor dues are paid whenever a vessel enters a port which is under a commission, and harbor-master's fees are paid only twice per calendar year by vessels entering ports not under a commission. Sydney belongs to the first class, and at that port Captain Jacobs paid the legal harbor dues. Malpeque and Port Mulgrave belong to the second class, and in those Captain Jacobs paid the legal harbor-master's fees, which, for a vessel like his, of from 100 to 200 tons, is \$1.50. That he paid only \$1 in Malpeque is due to an error of the harbor master, who should have charged him \$1.50, and by this error Captain Jacobs saved 50 cents, of which he should not complain. For full information as to the legal status of Canadian harbors Mr. Bayard is respectfully referred to the Canadian Statutes, 36 Vict., cap. 63; 42 Vict., cap. 30; and 38 Vict., cap. 30.

The minister of marine and fisheries believes that after a thorough perusal of these Mr. Bayard will not cite the payments made by Captain Jacobs as evidences of the "irresponsible and different treatment to which he was subjected in the several ports he visited, the only common feature of which seems to have been a surly hostility."

The minister submits that, from a careful consideration of all the circumstances, he can not resist the conviction that, in this whole



transaction, Captain Jacobs was more concerned in making up a case against the Canadian authorities than in unobtrusively performing any necessary acts of hospitality, and that his version of the matter, as sent to Mr. Bayard, is utterly unreliable.

The *Neskilita* was wrecked off a Canadian harbor; the crew, it is stated, came ashore in their own boat and unassisted; a Canadian collector was at hand offering his services, and within easy appeal to the Government, and the captain of a Canadian cruiser was in port; yet, Captain Jacobs would appear, by his own story, to have taken complete charge of the captain, to have ignored all proffers of assistance, and to have constituted himself the sole guardian and spokesman of the wrecked crew, to have been in short the one sole man actuated by kindly, humane feelings among a horde of cruel and unsympathetic Canadians.

For any exercise of good-will and assistance to Canadian seamen in distress by either foreign or native vessels, the Canadian Government can not but feel deeply grateful, and stands ready, as has been its invariable custom, to recognize suitably and reward such services, and when Captain Jacobs performs any necessary act of charitable help towards Canadian seamen in distress without the obvious aim of manufacturing an international grievance therefrom, he will not prove an exception to Canada's generous treatment.

The minister observes that in a dispatch to the governor-general, dated the 27th December, 1886, and in reference to this same case, Mr. Stanhope writes: "With reference to my dispatch of the 16th instant relating to the case of the United States fishing vessel *Mollie Adams*, and referring to the general complaints made on the part of the United States Government of the treatment of American fishing vessels in Canadian ports, I think it right to observe that whilst Her Majesty's Government do not assume the correctness of any allegations without first having obtained the explanations of the Dominion Government, they rely confidently upon your ministers taking every care that Her Majesty's Government are not placed in a position of being obliged to defend any acts of questionable justice or propriety."

The minister, while thanking Her Majesty's Government for the assurance conveyed that it will not "assume the correctness of any allegations without having obtained the explanations of the Dominion Government," and whilst assuring Her Majesty's Government that every possible care has been and will be taken that no "acts of questionable justice or propriety" are committed by the officers of the Dominion Government, can not refrain from calling attention to the loose, unreliable, and unsatisfactory nature of much of the information supplied to the United States Government, and upon which very grave charges are made, and very strong language officially used against the Canadian authorities. For instance, as stated in a previous part of this report, the strong representations made by Mr. Bayard in the case of the *Mollie Adams* are based solely upon a letter written by Captain Jacobs, not even accompanied by an official attestation, and not supported by a tittle of corroborative evidence.

It does not appear that any attempt was made to investigate the truth of this story, unreasonable and improbable as it must have appeared, as the letter written by Captain Jacobs bears date the 12th November, while Mr. Bayard's note based thereupon is dated the 1st

December. It would seem only fitting that in so grave a matter, involving alike the good name of a friendly country and the continued subsistence of previous amicable relations, great care should have been taken to avoid the use of such strong and even hostile language, based upon the unsupported statements of an interested skipper, and one whose reputation for straightforward conduct does not appear to be above reproach, if credence is to be given to the attached description, taken from the Boston Advertiser, of a transaction said to have occurred in his native city, and in which Captain Jacobs appears to have played no enviable part.

Numerous other instances of like flimsy and unreliable foundations for charges made against the Canadian authorities in regard to their treatment of United States fishing vessels can not have failed to attract the attention of Her Majesty's Government in the dispatches which from time to time have reached it from the United States.

The master of a United States fishing vessel, imperfectly understanding the provisions of the convention of 1818, the requirements of the Canadian customs law, or the regulations of Canadian ports, having, perhaps, an exaggerated idea of his supposed rights, or, it may be, desirous of evading all restrictions, is brought to book by officers of the law. He feels aggrieved and angry, and straightway conveys his supposed grievance to the authorities at Washington. Thereupon, without seeming allowance for the possibility of the statement being inaccurate or the narrator unfriendly, and with apparently no attempt to investigate the truth of the statement, it is made the basis of strong and unfriendly charges against the Canadian Government. Canada has suffered from such unfounded representations, and against the course adopted by the United States in this respect the minister enters his most earnest protest.

As an additional instance of the manner in which evidence is gathered and used to the prejudice of the Canadian case the minister calls attention to a communication submitted to the Senate of the United States by Mr. Edmunds, and which forms printed Document No. 54 of the Forty-ninth Congress, second session. This is the report of Mr. Spencer F. Baird, United States Fish Commissioner, containing a list, with particulars, of sixty-eight New England fishing vessels which had, as he alleged, "been subjected to treatment which neither the treaty of 1818 nor the principles of international law would seem to warrant."

The minister observes that it will appear from a perusal of this report that these sixty-eight cases were made up by Mr. Baird's officer from answers of owners, agents, or masters of fishing vessels in response to a circular letter sent to all New England fishing vessels, inviting them to forward statements of any interference with their operations by the Canadian Government.

Not a single statement was investigated by the Commissioner or any one acting for him, and not a single statement is accompanied by the affidavit of the person making it, or by corroborative evidence of any kind. In most instances, neither date, locality, nor name of Canadian officer is given, and an analysis of many of the cases affords *prima facie* evidence that they embody no real cause for complaint; yet Mr. Baird and his officer, Mr. Earle, vouched for the correctness and entire reliability of these sixty-eight statements. They were gravely submitted to the Senate as trustworthy evidence of Canadian



aggression, and became, no doubt, powerful factors in influencing Congressional legislation hostile to Canadian and British interests.

The minister, while inviting attention to and strongly deprecating such action as above recited on the part of the United States, takes occasion, at the same time, to express his entire confidence that the rights of Canada will not thereby be in any degree prejudiced in the eyes of Her Majesty's Government.

The committee concur in the foregoing report of the minister of marine and fisheries, and they recommend that your Excellency be moved to transmit a copy of this minute, if approved, to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
*Clerk Privy Council Canada.*

[Inclosure No. 3.]

*Mr. Murray, jr., to Mr. Tilton.*

PORT MULGRAVE, NOVA SCOTIA,  
*November 1, 1886.*

SIR: Referring to your letter of 28th October, I beg to say that on Monday, the 30th August, the schooner *Mollie Adams*, of Gloucester, Mass., Solomon Jacobs, master, passed two customs ports in the Straits of Canso before coming to my port. In fact, he sent his boat (dory) with his brother and a Captain Campbell to me to see if I would allow him to get seven empty barrels to put water in. I asked the men what they did with their water barrels. They told me they had filled them with mackerel, and that their tank leaked. I told the men that I had no power to allow them to purchase barrels, but I would borrow barrels to fill with water if they would caulk the tank. I also gave them a letter to take up to my superior, asking him to allow Captain Jacobs to purchase the barrels. They went on board, told their story, and the captain anchored his vessel and came ashore to see me. I offered to send a man on board to caulk the tank. In the mean time one of the crew came on shore and said that the cook had succeeded in tightening the tank; that it held salt water. I then borrowed the seven barrels to fill the water, which they did, and I returned the barrels again, and the captain was well pleased, as he appeared so.

If this is not satisfactory I can make oath to the foregoing.

I am, etc.,

DAVID MURRAY, JR.,  
*Subcollector Customs.*

[Sub-inclosure.]

*Mr. McNutt to Mr. Tilton.*

MALPEQUE, PRINCE EDWARD ISLAND, *January 7, 1887.*

SIR: I have the honor to acknowledge the receipt of your letter of the 29th December, covering statements made by Captain Jacobs, and now adjoin statement of facts as personally known by and communicated to me of wreck of the *Neskeleita* on Malpeque Bar, on Sunday night, the 26th September last. Information reached me early

on the following morning, and I at once proceeded to the harbor to see what assistance could be given in the case, when I met Captain Thornborne, of the *Neskilita*, and Captain Jacobs in company, and was informed by the latter that the crew were on board his vessel, and assured that everything that could be done for their comfort had been done. I was also given to understand that during the night the crew had abandoned their schooner and come in the harbor unassisted in their seine-boat, and boarded a Nova Scotia schooner lying in the harbor, and were the next morning invited by Captain Jacobs to make his vessel their home. I was also informed by Captain McLaren, commander of the Canadian cruiser *Critic*, that he also tendered his assistance, and was rather haughtily received by Captain Jacobs with the information that the crew were aboard his vessel and that he (Captain McLaren) did not think the case demanded him to force his assistance.

With regard to the wrecked material aboard of Captain Jacobs's vessel, I have only to say that this is the first intimation I have ever had of such material being aboard his vessel, except the crew's luggage, and that assuredly Captain Jacobs did not, so far as I can recollect, make any request of me whatever with regard to the landing of wrecked material.

With reference to the saving of material from the wrecked vessel, I would wish to say that I rendered the captain of the *Neskilita* all necessary assistance in procuring suitable men to do that work (and who were thus employed by him), and although I am aware that Captain Jacobs did accompany the captain of the *Neskilita* to the wreck, I can not say in what capacity or under what authority he did so.

So far as the assertion that the crew received the means to take them home from Captain Jacobs is concerned, I know nothing positive, except that he (Captain Jacobs) asked me if the Canadian Government would remunerate him for his attention to the crew, and feeling that I had nothing to do with him, I merely replied that I did not know. But I may say that shortly after the wreck occurred the captain of the *Neskilita* asked me if I could render them (the crew) any assistance in getting home, and I answered that I could not unless I was assured that they themselves were without the means of doing so, and that in any case I would have to telegraph to the department at Ottawa for instructions. Here the matter stopped, the captain making no further application.

With regard to the delay of ten days, said to be occasioned (Captain Jacobs) by reason of the shipwrecked crew, I may say that during the ten or fourteen days following on the said shipwreck we had an almost continuous period of stormy weather, with the exception of a couple or so of fine days, which were taken advantage of by the fishing fleet, and one at least by Captain Jacobs himself, but by all reports received by me resulting in little or no catches of mackerel.

These, so far as I can now recall them to memory, are the true facts in the case.

I am, etc.,

JAMES MCNUTT,  
Subcollector.



[Inclosure No. 4.]

*Mr. McLaren to Mr. Tilton.*GEORGETOWN, PRINCE EDWARD ISLAND, *January 6, 1887.*

DEAR SIR: Yours of the 29th ultimo to hand. In reference to the first part of the statement made by Captain Jacobs, I would say that he may have been off Malpeque at the time the wreck occurred, but I do not think he took the crew off; as, so far as I could learn at the time, they came ashore in one of their own seine-boats and went first to a Nova Scotia vessel and afterwards on board the *Mollie Adams*.

On the morning after the wreck occurred I went on board the *Mollie Adams*, and was immediately told by Captain Jacobs that he had made all arrangements for the crew, and having secured a team, was going with the captain of the *Neskilita* to the custom-house to note a protest. As I could see by the conduct of both captains that I was not wanted, I returned to my own vessel. Afterwards, in the course of a conversation with the captain of the *Neskilita*, he informed me that he had sailed out of Gloucester for some time, and in the course of that time with Captain Jacobs.

As to the statement that he could not get a boarding-house for his crew, I think it is false, as the crew of one of the American vessels wrecked about the same time had no difficulty in getting the people to board them. Once while talking with Mr. McNutt, the collector of customs at Malpeque, he mentioned that the captain of the *Neskilita* had engaged to board at his place, and he expressed his surprise that he was not coming. Both Captain Jacobs and the captain of the *Neskilita* were committing a fraud in trying to get off with the seine of the wrecked vessel, as it belonged to the underwriters; and I think that it was the prospect of getting Captain Jacobs to get away with the seine that prevented the captain of the *Neskilita* from asking me for assistance. However, Captain Jacobs, on finding he could not carry out his fraud, presented a claim of \$10 for the salvage of the seine and gear, which sum was paid him by Mr. Lemuel Poole, Charlottetown, who was acting on behalf of the underwriters. It may be possible that Captain Jacobs staid at Malpeque after I sailed, but, if so, it was his own fault, as the crew of the *Neskilita* had gone home before then.

It is my opinion that Captain Jacobs need not have lost one hour of time, for during the time the *Neskilita's* crew were on board his vessel the fleet, with the exception of one or two small vessels, was anchored in Malpeque, and unable to put to sea owing to the heavy sea on the bar.

After the occurrence of the wreck, about the 20th September, Captain Jacobs cruised in the North Bay and on the Cape Breton coast, and not until the 24th October was he reported as passing through Canso bound home.

As to the paying of the crew's passage home, I can say nothing, except that if he did he did it voluntarily, as the captain of the *Neskilita* could have sent his crew home without his assistance.

Yours, etc.,

WM. McLAREN.

[Inclosure No. 5.]

*Mr. Letsom to the deputy minister of fisheries, Ottawa.*

CUSTOM-HOUSE, Port Medway, January 6, 1887.

SIR: In reply to your letter of the 30th ultimo, inclosing extract of statement made by Captain S. Jacobs, of the schooner *Mollie Adams*, I have to say that on the 25th October last, Captain Solomon Jacobs, of schooner *Mollie Adams*, reported at this office. His report is now before me, in which he swears that he called here for shelter and repairs and for no other purpose. After making his report and when about leaving the office, Captain Jacobs asked if I would allow him to purchase a half barrel of flour. I asked him if he was without provisions, and he replied that he was not, adding that he had a good supply of all kinds of provisions except flour, and enough of that to last him home unless he met with some unusual delay. I then told him that under the circumstances I could not give him permission to purchase the flour; but no threat was made about seizing his vessel or imposing any penalty whatever.

The above I am quite willing to substantiate under oath, and can produce a witness to the truth of the statement.

I am, etc.,

E. E. LETSOM,  
Collector.

[Inclosure No. 6.]

*The Marquis of Lansdowne to Sir H. Holland.*

GOVERNMENT HOUSE,  
Ottawa, April 2, 1887.

SIR: With reference to Mr. Stanhope's dispatch of the 16th December last, transmitting a copy of a letter from the foreign office, with its inclosures, respecting the alleged improper conduct of authorities in the Dominion in dealing with the United States fishing vessels *Laura Sayward* and *Jennie Seaverns*, and requesting to be furnished with a report on these cases for communication to the United States Government, I have the honor to forward herewith a copy of an approved minute of the privy council of Canada, embodying a report of my minister of marine and fisheries on the subject.

I have much pleasure in calling your attention to the penultimate paragraph of that report, from which you will observe that it will, in the opinion of my Government, be possible, in cases like that of the *Jennie Seaverns*, where a foreign fishing vessel has entered a Canadian harbor for a lawful purpose and in the pursuance of her treaty rights, to exercise, the necessary supervision over the conduct of her master and crew, and to guard against infractions of the customs law and other statutes binding upon foreign vessels while in Canadian waters, without placing an armed guard on board or preventing reasonable communication with the shore.

My advisers are, in regard to such matters, fully prepared to recognize that a difference should be made between the treatment of vessels *bona fide* entering a Canadian harbor for shelter or repair, or to obtain wood and water, and that of other vessels of the same class entering such harbors ostensibly for a lawful purpose, but really with the intention of breaking the law.

I have, etc.,

LANSDOWNE.



[Sub-inclosure.]

*Report of a committee of the honorable the privy council for Canada approved by his excellency the governor-general in council on the 23d March, 1887.*

The committee of the privy council have had under consideration a dispatch dated the 16th December, 1886, from the right honorable the secretary of state for the Colonies, transmitting a copy of a letter from the foreign office covering a copy of a dispatch from Her Majesty's minister at Washington inclosing notes which he has received from Mr. Bayard, United States Secretary of State, protesting against the conduct of the Dominion authorities in their dealings with the United States fishing vessels *Laura Sayward* and *Jennie Seaverns*, and requesting to be furnished with a report on the subject for communication to the Government of the United States.

The minister of marine and fisheries, to whom the dispatch and inclosures were referred for immediate report, observes that Mr. Bayard takes exception to the "inhospitable and inhuman conduct" of the collector of customs at the port of Shelburne, Nova Scotia, in refusing to allow Captain Rose of the *Laura Sayward*, to buy sufficient food to last himself and crew on their homeward voyage, and complains of the action of the collector in "unnecessarily retaining" the papers of the vessel. Mr. Bayard bases his representation upon the annexed declaration made by Captain Rose, but supported by no other testimony.

The minister states that immediately on the receipt of the dispatch above mentioned a copy of the charges was forwarded to the collector at the port of Shelburne, and his statement in reply thereto is annexed.

The minister believes that Collector Atwood's statement is a reasonable and sufficient answer to the allegations made by the captain of the *Sayward*, and leaves no ground of justification for the strong language used by Mr. Bayard in his note to Sir L. Sackville West.

The minister further observes that, with reference to the *Jennie Seaverns*, Mr. Bayard complains of the conduct of Captain Quigley, of the *Terror*, in preventing the captain of the *Jennie Seaverns* from landing to visit his relations in Liverpool, Nova Scotia, and in forbidding his relatives to visit him on board his vessel, and in placing a guard upon the *Seaverns* while she was in port. These complaints are based upon the affidavit of Captain Tupper, of the *Seaverns*, a copy of which is attached. The statements of Captain Quigley, and his first officer, Bennett, are submitted in reply, and seem to afford ample proof that no violence or injustice was done to the fishing schooner.

The minister is of the opinion that the captain of the *Jennie Seaverns* has nothing to complain of. He came in solely for shelter, and this was not denied him. He was requested to report at the customs, with which request he, upon his own evidence, willingly complied.

The other precautions taken by Captain Quigley were simply to insure that, while shelter was being had, the provisions of the convention and of the customs law were not violated.

The minister, however, while assured that the vessel in question suffered no deprivation of or interference with its rights as defined by the convention of 1818, is of opinion that, in pursuance of the

spirit of uniform kindly interpretation of the law, which it has been the constant aim of the government of Canada to exemplify in its dealings with United States fishermen, it is possible for the officers in charge of the cruisers to efficiently guard the rights of Canadian citizens and enforce the provisions of the law without in such cases as the above finding it necessary to place an armed guard on board the fishing vessel, or preventing what may be deemed reasonable communication with the shore.

The committee, concurring, in the report of the minister of marine and fisheries, recommend that your excellency be moved to transmit a copy of this minute to the right honorable the secretary of state for the colonies for the purpose of communication to the Government of the United States.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
*Clerk Privy Council Canada.*

[Sub-inclosure 1.]

*Deposition of Medeo Rose.*

I, Medeo Rose, master of schooner *Laura Sayward*, of Gloucester, being duly sworn, do depose and say: That on Saturday, the 2d October, being then on Western Bank, on a fishing trip, and being short of provisions, we hove up anchor and started for home.

The wind was blowing almost a gale from the northwest, and, being almost dead ahead, we made slow progress on our voyage home. On Tuesday, the 5th October, we made Shelburne, Nova Scotia, and arrived in that harbor about 8 p. m. on that day, short of provisions, water, and oil to burn. On Wednesday I sailed for the inner harbor of Shelburne, arriving at the town about 4 p. m. On going ashore I found the custom-house closed, and hunted up the collector and entered my vessel, and asked permission from him to buy 7 pounds of sugar, 3 pounds of coffee, and 1 bushel of potatoes, and 2 pounds butter or lard or pork, and oil enough to last us home, and was refused.

I stated to him my situation, short of provisions, and a voyage of 250 miles before, and pleaded with him for this slight privilege, but it was of no avail. I then visited the American consul and asked his assistance, and found him powerless to aid me in this matter. The collector of customs held my papers until the next morning, although I asked for them as soon as I found I could not buy any provisions, say about one and a half hours after I entered, but he refused to give them to me until the next morning. Immediately on receiving my papers on Thursday morning I started for home, arriving on Sunday. I think the treatment I received harsh and cruel, driving myself and crew to sea with a scant supply of provisions, we having but a little flour and water, and liable to be buffeted for days before reaching home.

MEDEO ROSE.

MASSACHUSETTS, ESSEX, 88:

Personally appeared Medeo Rose and made oath to the truth of the above statement before me.

[SEAL.]

AARON PARSONS.  
*Notary Public.*

OCTOBER 13, 1886.



[Sub-Inclosure 2.]

*Mr. Atwood to Mr. Johnson.*CUSTOM-HOUSE, SHELBURNE, *January 5, 1887.*

SIR: With reference to the statement by Medeo Rose, master of the schooner *Laura Sayward*, I beg to say that in many particulars it is not true and is very unjust. The custom-house was not closed, as stated. Office hours are supposed to be from 9 a. m. to 4 p. m., but masters of vessels, American fishermen particularly, are allowed to report their vessels inward and outward, and obtain clearances at any hour between 6 a. m. and 11 p. m. (Sundays excepted), and the office is always open. On the 6th October last I left at 4 p. m., and went to an agricultural exhibition, not an eighth of a mile distant—say a three minutes' walk—and left word at the office to tell any one who called where I could be found. I had been on the grounds about fifteen minutes when Captain Rose put in an appearance, and I at once came to the office, and he reported his vessel, stated that he was from the bank bound home, and came in to fill water, and wanted provisions, as follows, viz: 7 pounds of sugar, 3 pounds of coffee, 1 bushel of potatoes, and 2 pounds of butter; this was all. I took a memorandum and attached to his inward report, and oil is not mentioned; stated that he had plenty of flour, fish, and other provisions sufficient for voyage home.

I gave him permission to fill water at once; but as the treaty made no provision for purchase of supplies, I would telegraph the department at Ottawa, and no doubt it would be allowed. Captain Rose expressed his willingness to remain until a reply was received. He called at the office next morning (Thursday) at 6.30 a. m., and finding I had not received a reply said, as the wind was fair and a good breeze, he would not wait longer and would take a clearance, which I gave him. I told him an answer to telegram would probably be received by 10 a. m. I did not consider it a case of actual distress by any means, as by the master's own statement he had plenty of other provisions, and all that he really and actually needed was to fill water.

The statement that I held his papers, although he asked for them, etc., and that I refused to give them to him until next morning, is all false. He did not ask further until next morning, when he got his clearance. The statement that the treatment he received was harsh and driving him to sea having little water and flour, etc., is all untrue, as what I have already stated will prove. Captain Medeo Rose was here with his vessel on the 23d November last, and entered his vessel and obtained clearance at 8 in the evening; was here again on the 27th November and remained five days for repairs, and nothing was said by him of the "inhuman conduct" or "harsh treatment" on the part of the collector towards him.

The above is a plain statement of the facts, and many of the statements can be corroborated by the American consul of this port if referred to him.

I am, etc.,

W. W. ATWOOD,  
Collector.

[Inclosure No. 7.]

*Deposition of Joseph Tupper.*

I, Joseph Tupper, master of the schooner *Jennie Seaverns*, of Gloucester, being duly sworn, do depose and say: That on Thursday, the 28th October, while on my passage home from a fishing trip, the wind blowing a gale from southeast and a heavy sea running, I was obliged to enter the harbor of Liverpool, Nova Scotia, for shelter. Immediately on coming to anchor was boarded by Captain Quigley, of Canadian cruiser *Terror*, who ordered me to go inshore at once and report at the custom-house, to which I replied that such was my intention. He gave me permission to take two men in the boat with me, but they must remain in the boat and must not step on shore. I asked Captain Quigley if I could, after entering, visit some of my relations who resided in Liverpool and whom I had not seen for many years. This privilege was denied me. After entering, having returned to my vessel, some of my relatives came to see me off. When Captain Quigley saw their boat alongside of my vessel he sent an officer and boat's crew, who ordered them away, and at sundown he placed an armed guard on board our vessel, who remained on board all night, and was taken off just before we sailed in the morning.

I complied with the Canadian laws, and had no intention or desire to violate them in any way, but to be made a prisoner on board my own vessel, and treated like a suspicious character, grates harshly upon the feelings of an American seaman, and I protest against such treatment, and respectfully ask from my own Government protection from such unjust, unfriendly, and arbitrary treatment.

JOSEPH TUPPER.

MASSACHUSETTS, ESSEX, ss:

Personally appeared Joseph Tupper, and made oath to the truth of the above statement before me,

AARON PARSONS,  
Notary Public.

NOVEMBER 4, 1886.

[Inclosure No. 8.]

*Mr. Quigley to Major Tilton.*

NEWCASTLE, January 19, 1887.

SIR: In reference to the American schooner *Jennie Seaverns* of Gloucester, I find she arrived on Thursday, the 28th October, as stated in his complaint, at Liverpool, Nova Scotia, and after she anchored I sent Chief Officer Bennett on board with instructions, telling him what the law was, so that he would not do anything through ignorance of it, and get his vessel in trouble. These instructions were to report his vessel at the customs before sailing, and to take two of his crew and boat with him when he did go for that purpose, but the rest of his crew were not to go on shore, and that after he reported no person from his vessel was to go on shore, as he got all he put in for, viz., shelter; and he reported his vessel putting in for that purpose and for no other; not for the purpose of letting his crew on shore.



The boat that was ordered from his vessel was from shore, and was not allowed alongside of these vessels, as it gave the crews a chance to get ashore with them, or to smuggle provisions alongside, so they were ordered off in all cases. (See chief officer's statement regarding the men who rowed the captain on shore.)

I never prevented the men who went ashore with the masters of vessels from landing and going with the masters to the custom-house if they wished, nor gave instructions to prevent them.

I placed two watchmen on board this vessel, as I did in all other cases, to prevent them from breaking the law in any respect through the night, and they were taken off in the morning before he sailed.

It is not true that I boarded this vessel as stated. I never spoke to him. There were two other American seiners in at the same time and were treated in the same way, less the watchmen, which were not required in their case, as they were close to me and I could see what was done on board them at all times from my vessel. These are the facts.

I have, etc.,

THOMAS QUIGLEY.

[Inclosure No. 9.]

*Deposition of Albert Bennett.*

I, Albert Bennett, late first officer of the Dominion cutter *Terror*, Captain Quigley, remember boarding the American seiner *Jennie Seaverns*, of Gloucester, United States, at the port of Liverpool, Nova Scotia, on the 28th October last past; boarded her, ordered Captain Tupper to report to the customs at Liverpool aforesaid, which he did, taking with him two men in his boat. Never told Captain Tupper not to allow his men to leave his boat while on shore; further, Captain Tupper, to the best of my knowledge and belief, never intimated to me that he had friends or relatives that he wished to visit in Liverpool, Nova Scotia.

Seeing a boat alongside, I went on board and ordered them away. Captain Tupper told me he did not know the visitors, and further, did not wish them on board his vessel.

Further, during the time the *Jennie Seaverns* was in the harbor of Liverpool, Nova Scotia, Captain Quigley never was on board her, I boarding her and carrying out his instructions to me.

ALBERT BENNETT,

*Late First Officer Cutter Terror.*

HOPEWELL CAPE, N. B., January 14, 1887.

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*Mr. Bayard to Mr. Phelps.*

No. 625.]

DEPARTMENT OF STATE,

Washington, May 23, 1887.

SIR: I transmit herewith for your information copies of recent correspondence relative to the case of the *Sarah H. Prior*, one of the fishery cases.

I am, etc.,

T. F. BAYARD.

[Inclosure No. 1.]

*Mr. Prior to Mr. Bayard.*

BOSTON, May 13, 1887.

DEAR SIR: I received the inclosed letter to-day and thought best to forward it to you for your perusal and advice. It is in regard to the seine belonging to the schooner *Sarah H. Prior*. The seine was lost off Malpeque and picked up by a British schooner and brought into Malpeque, where the *Prior* was lying. They refused to deliver it up after the captain of the *Prior* had offered to pay salvage on it. I sent you a sworn affidavit last November of the facts in the case. Please let me know when you think it best to enter a claim for damage. Hoping to hear from you at your earliest convenience,

I remain etc.,

P. H. PRIOR.

P. S.—Please let me know what steps to take in regard to answering the inclosed letter.

P. H. P.

[Sub-Inclosure.]

SOURIS, PRINCE EDWARD ISLAND,  
May 2, 1887.

MESSRS. P. H. PRIOR & SON,  
Boston, Mass.:

SIRS: In October last Captain Wolf of the British schooner *John M. Inglis* delivered to me a wrecked seine which he had picked up at sea. It had the name "Sarah H. Prior" printed somewhere about it. As receiver of wrecks for this district I made the necessary advertisement here and at Ottawa, where the head department is, but before I could ascertain who the owner was winter had set in and nothing could be done.

I had the seine nicely salted and secured for the winter. It is now in as good condition as when it was brought here. I have now to ask you if you are the real owners of this property, and if so, what disposition you wish me to make of it, whether you wish to pay the salvage, \$25, and some other charges, and have the property shipped to you by steamer or have it kept here until your vessel calls. Something must be done with it soon. I have had it overhauled this spring, and it appears in good condition, except of course the tearing. The purseline, etc., are with it, and it should be worth more than the charges against it.

Will you kindly advise me by return mail what your wishes are in the matter, and oblige,

Yours, etc.,

M. J. FOLEY,  
Receiver of Wrecks.



[Inclosure No. 2.]

*Mr. Bayard to Mr. Prior.*DEPARTMENT OF STATE,  
Washington, May 21, 1887.

SIR: Your letter of the 13th instant in relation to the claim preferred by you because of the alleged refusal of the commander of the Canadian cruiser *Critic* to permit the restoration to your fishing vessel, the *Sarah H. Prior*, of a valuable seine lost at sea and carried into Malpeque by a Canadian vessel, has been received.

As you were informed, by my letter of January 28 last, your original complaint of December 28, 1886, with the accompanying affidavit of the captain and crew of the *Sarah H. Prior* purporting to set forth the facts of the case, was laid before Her Britannic Majesty's minister at this capital. My note and Sir Lionel West's acknowledgement thereof are printed on pages 7 and 8 of the inclosed executive document.

I am now in receipt of Sir Lionel's reply, covering an approved report of a committee of the Dominion privy council, of which a copy is inclosed for your information.

The question appears to have been one of compliance with the usual wreck and salvage laws, and wholly disconnected from international right and duty.

The sworn statements of the master of the *Sarah H. Prior* as to the refusal of the commander of the *Critic* to permit the restoration of the seine are controverted.

It is alleged that, on the regular course of proceedings for the recovery of his property through the receiver of wrecks being pointed out to Captain McLaughlin, the latter "then said that as the seine was all torn to pieces, he would not bother himself about it."

It appears, from the letter addressed to you, May 2, by Mr. M. J. Foley, receiver of wrecks at Souris, Prince Edward Island, and which you send to me for my information, that the seine in question, after proper care during the winter, is still at your disposal on payment of the adjudged salvage, \$25. This sum, it may be noted, is that which Captain McLaughlin offered in the first instance to pay to the master of the *John Ingalls*.

Inasmuch as the rights of salvage are private rights, to be settled in judicial forums, and as no obstacle now exists, or appears to have at any time existed, to the recovery of your lost property by institution of a suit in the usual form, I am unable to discover any connection between the subject-matter of your complaint and any treaty of the United States with Great Britain, or ground for Government interposition.

Wreck-master Foley's letter is herewith returned to you, a copy being retained on file with your letter.

I am, etc.,

T. F. BAYARD.

*Mr. Bayard to Sir Charles Tupper.*

[Personal and unofficial.]

WASHINGTON, D. C., May 31, 1887.

MY DEAR SIR CHARLES:

The delay in writing you has been unavoidable.

In the very short interview afforded by your visit I referred to the embarrassment arising out of the gradual emancipation of Canada from the control of the mother country, and the consequent assumption by that community of attributes of autonomous and separate sovereignty, not, however, distinct from the Empire of Great Britain.

The awkwardness of this imperfectly-developed sovereignty is felt most strongly by the United States, which can not have formal treaty relations with Canada, except indirectly and as a colonial dependency of the British Crown, and nothing could better illustrate the embarrassment arising from this amorphous condition of things than the volumes of correspondence published severally this year, relating to the fisheries, by the United States, Great Britain, and the Government of the Dominion.

The time lost in this circumlocution, although often most regrettable, was the least part of the difficulty, and the indirectness of appeal and reply was the most serious feature, ending, as it did, very unsatisfactorily.

It is evident that the commercial intercourse between the inhabitants of Canada and those of the United States has grown into too vast proportions to be exposed much longer to this wordy triangular duel, and more direct and responsible methods should be resorted to.

Your own able, earnest, and patriotic services in the Government and Parliament of the Dominion are well known, and afford ample proof of your comprehension of the resources, rapidly-increasing interests, and needs of British North America.

On the other hand, I believe I am animated by an equal desire to serve my own country, and trust to do it worthily.

The immediate difficulty to be settled is found in the treaty of 1818 between the United States and Great Britain, which has been *questio vexata* ever since it was concluded, and to-day is suffered to interfere with and seriously embarrass the good understanding of both countries in the important commercial relations and interests which have come into being since its ratification, and for the adjustment of which it is wholly inadequate, as has been unhappily proved by the events of the past two years.

I am confident we both seek to attain a just and permanent settlement, and there is but one way to procure it, and that is by a straightforward treatment on a liberal and statesman-like plan of the entire commercial relations of the two countries.

I say *commercial*, because I do not propose to include, however indirectly, or by any amendment, however partial or oblique, the political relations of Canada and the United States, nor to affect the legislative independence of either country.

When you were here I was prepared to send my reply to the "Observations" upon my proposal for a settlement (of November 15 last), which were communicated to Mr. Phelps by Lord Salisbury



on March 24, and also to express my views of his lordship's alternative proposition.

Your visit and invitation to negotiate here was entirely welcome, and of this I endeavored to impress you.

Conversation with the President has confirmed these views, and now it remains to give them practical effect.

Great Britain being the only treaty-making party to deal with the United States, the envoys of that Government alone are authorized to speak in her behalf and create her obligations.

I presume you will be personally constituted a plenipotentiary of Great Britain to arrange here, with whomsoever may be selected to represent the United States, terms of arrangement for a *modus vivendi* to meet present emergencies and also a permanent plan to avoid all future disputes.

It appears to me that as matters now stand the colony of Newfoundland ought to be represented and included, for a single arrangement should suffice to regulate all the joint and several interests involved. I should, therefore, be informed speedily through the proper channel as to the authorization and appointment by the Imperial Government of such representatives.

The gravity of the present condition of affairs between our two countries demands entire frankness.

I feel we stand at "the parting of the ways." In one direction I can see a well-assured, steady, healthful relationship, devoid of petty jealousies, and filled with the fruits of a prosperity arising out of a friendship cemented by mutual interests and enduring because based upon justice; on the other, a career of embittered rivalries, staining our long frontier with the hues of hostility, in which victory means the destruction of an adjacent prosperity without gain to the prevalent party—a mutual physical and moral deterioration which ought to be abhorrent to patriots on both sides, and which I am sure no two men will exert themselves more to prevent than the parties to this unofficial correspondence.

As an intelligent observer of the current of popular sentiment in the United States, you can not have failed to note that the disputed interpretation of the treaty of 1818, and the action of the Canadian officials towards American fishing vessels during the past season, has awakened a great deal of feeling.

It behooves those who are charged with the safe conduct of the honor and interests of the respective countries by every means in their power sedulously to remove all causes of difference.

The roundabout manner in which the correspondence on the fisheries has been necessarily (perhaps) conducted has brought us into the new fishing season, and the period of possible friction is at hand, and this admonishes us that prompt action is needed.

I am prepared, therefore, to meet the authorized agents of Great Britain at this capital at the earliest possible day, and enter upon negotiations for a settlement of all differences.

The magnitude of the interests involved, and the far-reaching and disastrous consequences of any irritating and unfriendly action, will, I trust, present themselves to those in whose jurisdiction the fisheries

lie, and cause a wise abstention from vexatious enforcement of disputed powers.

Awaiting your reply, I am, very truly, yours,

T. F. BAYARD.

Sir CHARLES TUPPER, etc.,  
Ottawa, Canada.

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*Sir Charles Tupper to Mr. Bayard.*

[Personal and unofficial.]

OTTAWA, June , 1887. (Received June 10, 2 p. m.)

MY DEAR MR. BAYARD:

I have great pleasure in receiving your letter of May 31st, evincing as it does the importance which you attach to an amicable adjustment of the fisheries question, and the maintenance of the cordial commercial relations between the United States and Canada under which such vast and mutually beneficial have grown up.

I entirely concur in your statement that "We both seek to attain a just and permanent settlement, and that there is but one way to procure it, and that is by a straightforward treatment, on a liberal and statesman-like plan, of the entire commercial relations of the two countries."

I note particularly your suggestions that as the interests of Canada are so immediately concerned, Her Majesty's Government should be invited to depute a Canadian statesman to negotiate with you "a *modus vivendi* to meet present emergencies and also a permanent plan to avoid all disputes," and I feel no doubt that a negotiation thus undertaken would greatly increase the prospects of a satisfactory solution.

I say this, not because I believe that there has been any disposition on the part of the British Government to postpone Canadian interests to its own, or to retard by needless delay a settlement desired by and advantageous to the people of Canada and of the United States, but because I have no doubt that direct personal communications will save valuable time and render each side better able to comprehend the needs and the position of the other.

I am greatly flattered by your kind personal allusion to myself.

The selection of the persons who might be deputed to act as commissioners would, however, as you are aware, rest with Her Majesty's Government.

Our experience has been to the effect that the selection has in such cases, as far as it concerned the choice of the representatives of the Dominion, been made with careful regard to public feeling in this country.

I have thought it my duty and also the most effectual manner of giving effect to your suggestion, to make known to Lord Lansdowne the purport of my correspondence with you. He is strongly desirous of facilitating a settlement and will at once bring the matter before the secretary of state with an expression of his hope that no time will be lost in taking steps for establishing, by means of personal



communications with your Government, a *modus vivendi* such as you have described, and also for arriving at an understanding in regard to a lasting adjustment of our commercial relations.

In the earnest hope that your proposal for the settlement of this vexed question may result at an early day in a solution satisfactory and beneficial to both countries,

I remain, yours faithfully,

CHARLES TUPPER.

*Mr. Bayard to Mr. Phelps.*

No. 659 *bis*.]

DEPARTMENT OF STATE,  
Washington, July 12, 1887.

SIR: On March 24th last the Marquis of Salisbury made reply to your note to him of December 3, 1886, and communicated the views of the Government of the United States, under date of the 15th of November preceding, for the settlement of the fishery disputes.

This reply of his lordship and the "observations" of the Canadian authorities upon the proposal for an arrangement were conveyed in Mr. White's dispatch of March 20, and received at this Department April 11th last, when it had my immediate consideration.

An answer was prepared forthwith to the note of his lordship as well as to the "observations," and for your information I now inclose two copies thereof, which for convenience and intelligibility have been printed as a third parallel column to the original proposal and the Canadian "observations."

This document would have gone forward to you in continuance of the negotiation so commenced between yourself and the British foreign office, but I was indirectly made aware that the Canadian Government, to whom, as it appears, all communications from this Government to that of Great Britain, touching the matters under consideration between the two Governments in relation to the fishery question under the treaty of 1818 had been invariably submitted before reply, sought to make an informal communication to this Department on the subject.

Thus informed, and desiring to lend every aid in my power at this juncture toward a practical settlement of serious and long-standing difficulties, I delayed my response to Mr. White's dispatch of March 30, and on May 21 Sir Charles Tupper, the Canadian minister of finance, called upon me at this department, introduced by the British minister at this capital.

The object of this visit was to discuss informally the present condition and prospects of commercial relations between the United States and the Dominion of Canada, especially in connection with the fisheries and the commercial questions involved.

The visit here of Sir Charles Tupper, on behalf of the Canadian Government, was received with cordiality, and expressions were exchanged of a mutual desire for the settlement of all existing difficulties, and for an increased freedom of commercial intercourse between the United States and Canada.

In consequence of the statements made by Sir Charles Tupper on the occasion referred to, I wrote him a personal and unofficial letter

on the 31st of May, and received on June 10th his reply, and copies of this correspondence were duly sent to you.

Yesterday Sir Lionel West handed me, and without comment, the following copy of a telegram to him from Lord Salisbury:

"If Secretary of State will formally propose the appointment of commission as suggested by him in his correspondence with Sir Charles Tupper, Her Majesty's Government will agree with great pleasure.

"SALISBURY."

and I have just telegraphed you to the following effect:

"PHELPS, *Minister, London*:

"Sir Lionel West handed to me yesterday telegram from Lord Salisbury agreeing to the negotiation suggested by me informally in correspondence with Sir Charles Tupper, after his visit to this capital, and requesting me to make formal proposal, which will be forwarded to you at once.

"BAYARD."

By reference to my personal letter to you of May 31, which inclosed a copy of my letter to Sir Charles Tupper of that date, you will perceive that I did not propose the appointment of a "commission," but used the following language in reference to the proposed negotiation:

"Your visit and invitation to negotiate here was entirely welcome, and of this I endeavored to impress you.

"Conversation with the President has confirmed these views, and now it remains to give them practical effect.

"Great Britain being the only treaty-making party to deal with the United States, the envoys of that Government alone are authorized to speak in her behalf and create her obligations.

"I presume you will be personally constituted a plenipotentiary of Great Britain to arrange here, with whomsoever may be selected to represent the United States, terms of arrangement for a *modus vivendi* to meet present emergencies, and also a permanent plan to avoid all future disputes.

"It appears to me that as matters now stand the colony of Newfoundland ought to be represented and included, for a single arrangement should suffice to regulate all the joint and several interests involved.

"I should, therefore, be informed speedily, through the proper channels, as to the authorization and appointment by the Imperial Government of such representatives.

\* \* \* \* \*

"I am prepared, therefore, to meet the authorized agents of Great Britain at this capital at the earliest possible day, and enter upon negotiations for a settlement of all differences."

By reason of the action of the Senate on April 15, 1886, in regard to the recommendation of the President for the appointment of a joint commission to take into consideration the entire question of fishing rights of the two Governments and their citizens on the coast of British North America, the formation of a joint commission was not again proposed by me, but in the discharge of his constitutional functions negotiations with a view to a settlement were not abandoned,



but have been proceeded with by this Department under the direction of the President.

The number of plenipotentiaries to be employed on either side does not seem to be material to the object in view. The treaty of 1854 comprehended the same class of questions substantially, and as I have before remarked in my correspondence with you, was negotiated by the Earl of Elgin, at that time governor-general of Canada, and Mr. William L. Marcy, then the Secretary of State of the United States. By reference also to our prior treaties with Great Britain it will be found that the number of plenipotentiaries employed on either side varied and was frequently unequal.

The "mixed commission" referred to in the first article of the *ad interim* proposal submitted by you in December last to the British foreign office, was to be authorized by Congress before appointed, and only under legislative authority could they be so employed and provision made for their compensation.

It is not, therefore, considered essential or important for the accomplishment of the negotiation now contemplated to provide for the appointment of a commission, *eo nomine*.

The questions to be considered and settled are not so complicated in number or nature as to require a large numerical force of negotiators, such as was apparently deemed expedient in 1871.

It is regarded by the President as of the highest importance that a distinct and friendly understanding should without delay be arrived at between the United States and Great Britain, touching the extent of the rights which belong respectively to the citizens of the United States and the subjects of Her Britannic Majesty in relation to the fisheries on the coasts of the British Possessions in North America, and as to any other questions which affect the trade and commercial relations between the United States and those possessions.

You are, therefore, instructed to propose to Her Majesty's principal secretary of state for foreign affairs the appointment of an envoy extraordinary and minister plenipotentiary, to meet in the city of Washington a minister plenipotentiary of the Government of the United States, duly authorized by the respective Governments to treat of and discuss the mode of settling all questions which have arisen out of the fisheries on the coasts of British North America, and all other questions affecting the relations between the United States and Her Britannic Majesty's possessions in North America.

Should it be found necessary or expedient to increase the number of the representatives of either party in the proposed negotiation, it can be done, and notice be given to that effect.

Believing this proposal to be in accord with late expressions of Her Majesty's Government, indicating a cordial and sincere desire to arrive at an amicable, permanent, and just settlement of the important question above referred to, I transmit it to you for presentation, in the full confidence of its prompt acceptance by Her Majesty's Government, and I have the honor to be, Sir,

Your obedient servant,

T. F. BAYARD.

[Inclosure No. 1.]

FISHERIES ARRANGEMENT PROPOSED BY UNITED STATES, WITH "OBSERVATIONS"  
OF BRITISH GOVERNMENT AND REPLY OF GOVERNMENT OF UNITED STATES.

*Ad interim Arrangement proposed by the United States, Government.*

*Observations on Mr. Bayard's Memorandum.*

*Reply to "Observations" on Proposal.*

ARTICLE I.

WHEREAS, in the 1st Article of the Convention between the United States and Great Britain, concluded and signed in London on the 20th October, 1818, it was agreed between the High Contracting Parties "that the inhabitants of the said United States shall have forever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbours, and creeks, from Mount Joly on the Southern coast of Labrador, to and through the Straits on Belleisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company; and that the American fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbours, and creeks of the southern part of the coast of Newfoundland, here above described, and of the coast of Labrador; but so soon as the same, or any portion thereof, shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such portions so settled without previous agreement for such purpose with the inhabitants, proprietors, or possessors of the ground;" and was declared that "the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on or within 3 marine miles of any of the coasts, bays, creeks, or harbours of His Britannic Majesty's dominions in America not included within the above-mentioned limits; provided, however, that the American fishermen shall be admitted to enter such bays or harbours for the purpose of shelter, and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as

THE most important departure in this Article from the Protocol of 1866 is the interpolation of the stipulation, "that the bays and harbours from which American vessels are in future to be excluded, save for the purposes for which entrance into bays and harbours is permitted by said Article, are hereby agreed to be taken to be such harbours as are 10, or less than 10, miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour in the part nearest the entrance at the first point where the width does not exceed 10 miles."

This provision would involve a surrender of fishing rights which have always been regarded as the exclusive property of Canada, and would make common fishing grounds of the territorial waters which, by the law of nations, have been invariably regarded both in Great Britain and the United States as belonging to the adjacent country. In the case, for instance, of the Baie des Chaleurs, a peculiarly well-marked and almost land-locked indentation of the Canadian coast, the 10-mile line would be drawn from points in the heart of Canadian territory, and almost 70 miles distance from the natural entrance or mouth of the bay. This would be done in spite of the fact that, both by Imperial legislation and by judicial interpretation, this bay has been declared to form a part of the territory of Canada. (See Imperial Statute 14 & 15 Vict., cap. 63; and "Mouat v. McPhee," 5 Sup. Court of Canada Reports, p. 66.)

The Convention with France in 1839, and similar Conventions with other European Powers, form no precedents for the adoption of a 10-mile limit. Those Conventions were doubtless passed with a view to the geographical peculiarities of the coast to which they related. They had for their object the definition of the boundary-lines which, owing to the configuration of the coast, perhaps could not readily be settled by reference to the law of nations, and involve other conditions which are inapplicable to

A prior agreement between the two Governments as to the proper definition of the "bays and harbours" from which American fishermen are hereafter to be excluded, would not only facilitate the labors of the proposed Commission, by materially assisting it in defining such bays and harbours, but would give to its action a finality that could not otherwise be expected. The width of ten miles was proposed, not only because it had been followed in Conventions between many other powers, but also because it was deemed reasonable and just in the present case; this Government recognizing the fact that, while it might have claimed a width of six miles as a basis of settlement, fishing within bays and harbours only slightly wider would be confined to areas so narrow as to render it practically valueless and almost necessarily expose the fishermen to constant danger of carrying their operations into forbidden waters. A width of more than ten miles would give room for safe fishing more than three miles from either shore, and thus prevent the constant disputes which this Government's proposal, following the Conventions above noticed, was designed to avert.

It was not known to involve the surrender of rights "which has always been regarded as the exclusive property of Canada," or to "make common fishing ground of territorial waters, which, by the law of nations, have been invariably regarded, both in Great Britain and the United States, as belonging to the adjacent country."

The case of the Baie des Chaleurs, the only case cited in this relation, does not appear to sustain the "observations" above quoted. From 1854 until 1866 American fishermen were permitted free access to all territorial waters of the provinces under treaty stipulations. From 1866 until 1870 they enjoyed similar access under special licenses issued by the Canadian Government. In 1870 the license system was discontinued, and under date of May 14 of that year a draft of special instructions to officers in command of the marine police, to protect the



may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them;" and whereas differences have arisen in regard to the extent of the above-mentioned renunciation, the Government of the United States and Her Majesty the Queen of Great Britain, being equally desirous of avoiding further misunderstanding, agree to appoint a Mixed Commission for the following purposes, namely:

1. To agree upon and establish by a series of lines the limits which shall separate the exclusive from the common right of fishing on the coast and in the adjacent waters of the British North American Colonies, in conformity with the 1st Article of the Convention of 1818, except that the bays and harbours from which American fishermen are in the future to be excluded, save for the purposes for which entrance into the bays and harbours is permitted by said Article, are hereby agreed to be taken to be such bays and harbours as are 10 or less than 10 miles in width, and the distance of 3 marine miles from such bays and harbours shall be measured from a straight line drawn across the bay or harbour, in the part nearest the entrance, at the first point where the width does not exceed 10 miles, the said lines to be regularly numbered, duly described, and also clearly marked on Charts prepared in duplicate for the purpose.

2. To agree upon and establish such Regulations as may be necessary and proper to secure to the fishermen of the United States the privilege of entering bays and harbours for the purpose of shelter and repairing damages therein, of purchasing wood, and of obtaining water, and to agree upon and establish such restrictions as may be necessary to prevent the abuse of the privilege reserved by said Convention to the fishermen of the United States.

3. To agree upon and recommend the penalties to be adjudged, and such proceedings and jurisdiction as may be necessary to secure a speedy trial and judgment, with as little expense as possible, for the violators of rights and the transgressors of the limits and restrictions which may be hereby adopted:

Provided, however, that the limits, restrictions, and Regulations which may be agreed upon by the said Commission shall not be final, nor have any effect, until so jointly confirmed and declared by

the territorial waters of Canada.

This is shown by the fact that in the French Convention the whole of the oyster-beds in Granville Bay, otherwise called the Bay of Cancale, the entrance of which exceeds 10 miles in width, were regarded as French, and the enjoyment of them is reserved to the local fishermen.

A reference to the action of the United States' Government, and to the admission made by their statesmen in regard [to] bays on the American coasts, strengthens this view; and the case of the English ship *Grange* shows that the Government of the United States in 1793 claimed Delaware Bay as being within territorial waters.

Mr. Bayard contends that the rule which he asks to have set up was adopted by the Empire of the Commission appointed under the Convention of 1853 in the case of the United States' fishing-schooner *Washington*, that it was by him applied to the Bay of Fundy, and that it is for this reason applicable to other Canadian bays.

It is submitted, however, that as one of the headlands of the Bay of Fundy is in the territory of the United States any rules of international law applicable to that bay are not therefore equally applicable to other bays the headlands of which are both within the territory of the same Power.

The second paragraph of the 1st Article does not incorporate the exact language of the Convention of 1818. For instance, the words, "and for no other purpose whatever," should be inserted after the mention of the purposes for which vessels may enter Canadian waters, and after the words, "as may be necessary to prevent," should be inserted, "their taking, drying, or curing fish therein, or in any other manner abusing the privileges reserved, &c."

To make the language conform correctly to the Convention of 1818, several other verbal alterations, which need not be enumerated here, would be necessary.

Inshore fisheries, was submitted by Mr. P. Mitchell, Minister of Marine and Fisheries of the Dominion, to the Privy Council, and on the same day was approved. In that draft the width of ten miles, as now proposed by this Government, was laid down as the definition of the bays and harbours from which American fishermen were to be excluded; and in respect to the Bay des Chaleurs, it was directed that the officers mentioned should not admit American fishermen "inside of a line "drawn across at that part "of such bay where its "width does not exceed ten "miles." (See Sess. Pap., 1870; see also Appendix "A" to this Memorandum.) It is true that it was stated that these limits were "for the present to be exceptional." But they are irreconcilable with the supposition that the present proposal of this Government "would involve "a surrender of fishing "rights which have always "been regarded as the exclusive property of Canada."

It is, however, to be observed that the instructions above referred to were not enforced, but were, at the request of Her Majesty's Government, amended, by confining the exercise of police jurisdiction to a distance of three miles from the coasts or from bays less than six miles in width. And in respect to the Bay des Chaleurs, it was ordered that American fishermen should not be interfered with unless they were found "within three miles of the shore." (Sess. Pap., Vol. IV, No. 4, 1871; see also Appendix "B.")

The final instructions of 1870, thus first approved and adopted, were reiterated by their reissue in 1871. Such was the condition of things from the discontinuance of the Canadian license system, in 1870, until, by the Treaty of Washington, American fishermen again had access to the inshore fisheries.

As to the statute cited (14 and 15 Vict., cap. 63, August 7, 1851), it is only necessary to say that it can have no relevance to the present discussion, because it related exclusively to the settlement of disputed boundaries between the two British provinces of Canada and New Brunswick, and had no international aspect whatever; and the same may be said of the case cited, which was wholly domestic in its nature.

Excepting the Bay des Chaleurs, no case is adduced to show why the limit adopted in the Conventions regulating the fisheries in

the United States and Her Majesty the Queen of Great Britain, either by Treaty or by laws mutually acknowledged.

the British Channel and in the North Sea would not be equally applicable to the provinces. The coasts bordering on those waters contain numerous "bays" more than ten miles wide; and no other condition has been suggested to make the limit established by Great Britain and other powers as to those coasts "inapplicable" to the coasts of Canada.

The exception referred to (of the oyster beds in Granville Bay) from the ten-mile rule in the Conventions of 1839 and 1843, between Great Britain and France, is found, upon examination of the latter Convention, to be "established upon special principles;" and it is believed that the area of waters so excepted is scarcely 12 miles by 19. In this relation it may be instructive to note the terms of the Memorandum proposed for the Foreign Office in 1870, with reference to a Commission to settle the fishing limits on the coast of British North America. (Sess. Pap., 1871; see also Appendix "C.")

The Bay des Chaleurs is 16½ miles wide at the mouth, measured from Birch Point to Point Macquereau; contains within its limits several other well-defined bays, distinguished by their respective names, and, according to the "observations," a distance of almost seventy miles inward may be traversed before reaching the ten mile line.

The Delaware Bay is 11½ miles wide at the mouth, 32 miles from which it narrows into the river of that name, and has always been held to be territorial waters, before and since the case of the *Grange*—an international case,—in 1793, down to the present time.

In delivering judgment in the case of the *Washington*, the Umpire considered the headland theory and pronounced it "new doctrine." He noted among other facts that one of the headlands of the Bay of Fundy was in the United States, but did not place his decision on that ground. And immediately in the next case, that of the *Argus*, heard by him and decided on the same day, he wholly discarded the headland theory and made an award in favor of the owners. The *Argus* was seized, not in the Bay of Fundy, but because (although more than three miles from land) she was found fishing within a line drawn from headland to headland, from Cow Bay to Cape North, on the northeast side of Cape Breton Island.



The language of the Convention of 1818 was not fully incorporated in the second paragraph of the 1st Article of the proposal, because that paragraph relates to regulations for the secure enjoyment of certain privileges expressly reserved. The words "and for no other purpose whatever" would in this relation be surplusage. The restrictions to prevent the abuse of the privileges referred to would necessarily be such as to prevent the "taking, drying, and curing" of fish. For these reasons the words referred to were not inserted, nor is the usefulness of their insertion apparent.

*Ad interim Arrangement proposed by the United States' Government.*

*Observations on Mr. Bayard's Memorandum.*

*Reply to "Observations" on Proposal.*

ARTICLE II.

Pending a definitive arrangement on the subject, Her Britannic Majesty's Government agree to instruct the proper Colonial and other British officers to abstain from seizing or molesting fishing vessels of the United States unless they are found within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions in America, there fishing, or to have been fishing or preparing to fish within those limits, not included within the limits within which, under the Treaty of 1818, the fishermen of the United States continue to retain a common right of fishery with Her Britannic Majesty's subjects.

This Article would suspend the operation of the Statutes of Great Britain and of Canada, and of the provinces now constituting Canada, not only as to the various offenses connected with fishing, but as to customs, harbours, and shipping, and would give to the fishing vessels of the United States privileges in Canadian ports which are not enjoyed by vessels of any other class, or of any other nation. Such vessels would, for example, be free from the duty of reporting at the Customs on entering a Canadian harbour, and no safeguard could be adopted to prevent infraction of the Customs Laws by any vessel asserting the character of a fishing vessel of the United States.

Instead of allowing to such vessels merely the restricted privileges reserved by the Convention of 1818, it would give them greater privileges than are enjoyed at the present time by any vessels in any part of the world.

*Ad interim Arrangement proposed by the United States' Government.*

*Observations on Mr. Bayard's Memorandum.*

*Reply to "Observations" on Proposal.*

ARTICLE III.

For the purpose of executing Article I of the Convention of 1818, the Government of the United States and the Government of Her Britannic Majesty hereby agree to send each to the Gulf of St. Lawrence a national vessel, and also one each to cruise during the fishing season on the southern coasts of Nova Scotia. Whenever a fishing vessel of

This Article would deprive the Courts in Canada of their jurisdiction, and would vest that jurisdiction in a Tribunal not bound by legal principles, but clothed with supreme authority to decide on most important rights of the Canadian people.

It would submit such rights to the adjudication of two naval officers, one of

ARTICLE II.

The objections to this Article will, it is believed, be removed by a reference to Article VI, in which "the United States agrees to admonish its fishermen to comply" with Canadian customs regulations and to co-operate in securing their enforcement. Obedience by American fishing vessels to Canadian laws was believed and certainly was intended to be secured by this article. By the consolidation, however, of Articles II and VI the criticism would be fully met.

ARTICLE III.

As the chief object of this Article is not unacceptable to Her Majesty's Government—i. e., the establishment of a joint system of inquiry by naval officers of the two countries in the first instance—it is believed that the objections suggested may be removed by an enlargement of the list of enumerated offenses so as to include infractions of the

the United States shall be seized for violating the provisions of the aforesaid Convention by fishing or preparing to fish within 3 marine miles of any of the coasts, bays, creeks, and harbours of Her Britannic Majesty's dominions included within the limits within which fishing is by the terms of the said Convention renounced, such vessels shall forthwith be reported to the officer in command of one of the said national vessels, who, in conjunction with the officer in command of another of said vessels of different nationality, shall hear and examine into the facts of the case. Should the said commanding officers be of opinion that the charge is not sustained, the vessel shall be released. But if they should be of opinion that the vessel should be subjected to a judicial examination, she shall forthwith be sent for trial before the Vice-Admiralty Court at Halifax. If, however, the said commanding officers should differ in opinion, they shall name some third person to act as Umpire between them, and should they be unable to agree upon the name of such third person, they shall each name a person, and it shall be determined by lot which of the two persons so named shall be the Umpire.

them belonging to a foreign country, who, if they should disagree and be unable to choose an Umpire must refer the final decision of the great interests which might be at stake to some person chosen by lot.

If a vessel charged with infraction of Canadian fishing rights should be thought worthy of being subjected to a "judicial examination," she would be sent to the Vice-Admiralty Court at Halifax, but there would be no redress, no appeal, and no reference to any Tribunal if the naval officers should think proper to release her.

It should, however, be observed that the limitation in the second sentence of this Article of the violations of the Convention which are to render a vessel liable to seizure could not be accepted by Her Majesty's Government.

For these reasons, the Article in the form proposed is inadmissible, but Her Majesty's Government are not indisposed to agree to the principle of a joint inquiry by the naval officers of the two countries in the first instance, the vessel to be sent for trial at Halifax if the naval officers do not agree that she should be released.

They fear, however, that there would be serious practical difficulties in giving effect to this arrangement, owing to the great length of coast, and the delays, which must in consequence be frequent, in securing the presence at the same time and place of the naval officers of both Powers.

regulations which may be established by the Commission. And the treatment to be awarded to such infractions should also be considered by the same body.

*Ad interim Arrangement proposed by the United States' Government.*

*Observations on Mr. Bayard's Memorandum.*

*Reply to "Observations" on Proposal.*

ARTICLE IV.

The fishing vessels of the United States shall have in the established ports of entry of Her Britannic Majesty's dominions in America the same commercial privileges as other vessels of the United States, including the purchase of bait and other supplies; and such privileges shall be exercised subject to the same Rules and Regulations and payment of the same port charges as are prescribed for other vessels of the United States.

This Article is also open to grave objection. It proposes to give the United States fishing vessels the same commercial privileges as those to which other vessels of the United States are entitled, although such privileges are expressly renounced by the Convention of 1818 on behalf of fishing vessels, which were thereafter to be denied the right of access to Canadian waters for any purpose whatever, except those of shelter, repairs, and the purchase of wood and water. It has frequently been pointed out that an attempt was made, during the negotiations which preceded the Convention of 1818, to obtain for the fishermen of the United States the right of obtaining bait in Canadian waters, and that this attempt was successfully resisted. In spite of this fact, it is pro-

The Treaty of 1818 related solely to Fisheries. It was not a commercial Convention, and no commercial privileges were renounced by it. It contains no reference to "ports," of which, it is believed, the only ones then existing were Halifax, in Nova Scotia, and possibly one or two more in the other provinces; and these ports were not until long afterwards opened, by reciprocal commercial regulations, to vessels of the United States engaged in trading.

The right to "obtain" (i. e., take, or fish for) bait, was not insisted upon by the American negotiators, and was doubtless omitted from the Treaty, because, as it would have permitted fishing for that purpose, it was a partial reassertion of the right to fish within the limits as to which the right to

ARTICLE IV.



posed, under this Article, to declare that the Convention of 1818 gave that privilege, as well as the privilege of purchasing other supplies in the harbours of the Dominion.

take fish had already been expressly renounced.

The purchase of bait and other supplies by the American fishermen in the established ports of entry of Canada, as proposed in Article IV, is not regarded as inconsistent with any of the provisions of the Treaty of 1818; and in this relation it is pertinent to note the declaration of the Earl of Kimberly, in his letter of February 16, 1871, to Lord Lisgar, that "the exclusion of American fishermen from resorting to Canadian ports, except for the purpose of shelter, and of repairing damages therein, purchasing wood, and obtaining water, might be warranted by the letter of the Treaty of 1818, and by the terms of the Imperial Act 59, Geo. III, Chap. 38, but Her Majesty's Government feel bound to state that it seems to them an extreme measure inconsistent with the general policy of the Empire, and they were disposed to concede this point to the United States Government under such restrictions as may be necessary to prevent smuggling, and to guard against any substantial invasion of the exclusive rights of fishing which may be reserved to British subjects."

It is not contended that the right to purchase bait and supplies, or any other privilege of trade, was given by the Treaty of 1818. Neither was any such right or privilege stipulated for or given by the Treaty of 1854, nor by the Treaty of Washington; and the Halifax Commission decided in 1877, that it was not "competent" for that tribunal "to award compensation for commercial intercourse between the two countries, nor for purchasing bait, ice, supplies, &c., nor for permission to transship cargoes in British waters." And yet this Government is not aware that, during the existence of the Treaty of 1854 or the Treaty of Washington, question was ever made of the right of American fishermen to purchase bait and other supplies in Canadian ports, or that such privileges were ever denied them.

*Ad interim Arrangement proposed by the United States' Government.*

*Observations on Mr. Bayard's Memorandum.*

*Reply to "Observations" on Proposal.*

#### ARTICLE V.

The Government of Her Britannic Majesty agree to release all United States' fishing vessels now under seizure for failing to report at custom-houses when seeking shelter, repairs, or supplies, and to refund all fines exacted for such failure to report. And the High Contracting Parties agree to appoint a Joint Commission to ascertain the amount of damage caused to American fishermen during the year 1886 by seizure and detention in violation of the Treaty of 1818, said Commission to make awards therefor to the parties injured.

By this Article it is proposed to give retrospective effect to the unjustified interpretation sought to be placed on the Convention by the last preceding Article.

It is assumed, without discussion, that all United States' fishing vessels which have been seized since the expiration of the Treaty of Washington have been illegally seized, leaving, as the only question still open for consideration, the amount of damages for which the Canadian authorities are liable.

Such a proposal appears to Her Majesty's Government quite inadmissible.

#### ARTICLE V.

This Government is not disposed to insist on the precise form of this Article, but is ready to substitute therefor a submission to arbitration in more general terms.

*Ad interim Arrangement proposed by the United States' Government.*

*Observations on Mr. Bayard's Memorandum.*

#### ARTICLE VI.

The Government of the United States and the Government of Her Britannic Majesty agree to give concurrent notification and warning of Canadian Customs Regulations, and the United States agrees to admonish its fishermen to comply with them and co-operate in securing their enforcement.

This Article calls for no remark.

#### APPENDIX A.

"In such capacity, your jurisdiction must be strictly confined within the limit of 'three marine miles of any of the coasts, bays, creeks or harbors,' of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in fishing. Where any of the bays, creeks or harbors shall not exceed ten geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek or harbor, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than ten miles apart; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within three marine miles of the coast.

"*Jurisdiction.*—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks or harbors. Her Majesty's Government are clearly of opinion, that by the Convention of 1818, the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights in this respect, which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or creek which is less than ten geographical miles in width. In the case of any other bay, as the Bay de Chaleurs, for example, you will not admit any United States fishing vessel or boat, or any American fishermen, inside of a line drawn across at that part of such bay where its width does not exceed ten miles." (Session Papers, Vol. III, No. 6, 1870.)

#### APPENDIX B.

"In such capacity, your jurisdiction must be strictly confined within the limit of 'three marine miles of any of the coasts, bays, creeks or harbors' of Canada, with respect to any action you may take against American fishing vessels and United States citizens engaged in



**fishing.** Where any of the bays, creeks, or harbors shall not exceed six geographical miles in width, you will consider that the line of demarcation extends from headland to headland, either at the entrance to such bay, creek, or harbor, or from and between given points on both sides thereof, at any place nearest the mouth where the shores are less than six miles apart; and may exclude foreign fishermen and fishing vessels therefrom, or seize if found within three marine miles of the coast.

**"Jurisdiction.**—The limits within which you will, if necessary, exercise the power to exclude United States fishermen, or to detain American fishing vessels or boats, are for the present to be exceptional. Difficulties have arisen in former times with respect to the question, whether the exclusive limits should be measured on lines drawn parallel everywhere to the coast and describing its sinuosities, or on lines produced from headland to headland across the entrances of bays, creeks or harbors. Her Majesty's Government are clearly of opinion that, by the Convention of 1818, the United States have renounced the right of fishing not only within three miles of the Colonial shores, but within three miles of a line drawn across the mouth of any British bay or creek. It is, however, the wish of Her Majesty's Government neither to concede, nor for the present to enforce any rights in this respect which are in their nature open to any serious question. Until further instructed, therefore, you will not interfere with any American fishermen unless found within three miles of the shore, or within three miles of a line drawn across the mouth of a bay or a creek which, though in parts more than six miles wide, is less than six geographical miles in width at its mouth. *In the case of any other bay, as the Bay des Chaleurs* for example, you will not interfere with any United States fishing vessel or boat, or any American fishermen, unless they are found within three miles of the shore.

**"Action.**—You will accost every United States vessel or boat actually within three marine miles of the shore along any other part of the coast except Labrador and around the Magdalen Islands, or within three marine miles of the entrance of any bay, harbor, or creek which is less than six geographical miles in width, or inside of a line drawn across any part of such bay, harbor, or creek at points nearest to the mouth thereof not wider apart than six geographical miles, and if either fishing, preparing to fish, or having obviously fished within the exclusive limits, you will, in accordance with the above-rected acts, seize at once any vessel detected in violating the law, and send or take her into port for condemnation; but you are not to do so unless it is evident, and can be clearly proved, that the offense of fishing has been committed, and that the vessel is captured within the prohibited limits." (Session Papers, Vol. IV, No. 4, 1871.)

#### APPENDIX C.—*The secretary of state for the colonies to the governor-general.*

DOWNING STREET, October 10, 1870.

SIR: I inclose a copy of a memorandum, which I have requested Lord Granville to transmit to Sir E. Thornton, with instructions to communicate with you before addressing himself to the Government of United States on the subject to which the memorandum relates.

The object of Her Majesty's Government is, as you will observe, to give effect to the wishes of your Government, by appointing a joint commission, on which Great Britain, the United States, and Canada are to be represented, with the object of inquiring what ought to be the geographical limits of the exclusive fisheries of the British North American colonies. In accordance with the understood desire of your advisers it is proposed that the inquiry should be held in America.

The proposal contained in the last paragraph is made with a view to avoid diplomatic difficulties, which might otherwise attend the negotiation.

I have, etc.,

KIMBERLEY.

Governor-General the Right Hon. Sir JOHN YOUNG, G. C. B., G. C. M. G.

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*Sir L. S. Sackville West to Mr. Bayard.*

WASHINGTON, July 18, 1887. (Received July 19.)

SIR: In your note of the 11th of November last, inclosing copies of the statements with affidavits from Captain Medeo Rose, master of the schooner *Laura Sayward*, of Gloucester, Mass., you state that these papers impressively describe the "inhospitable" and "inhuman" conduct "of the collector of the port of Shelburne, Nova Scotia, in refusing to allow Captain Rose to buy sufficient food for himself and crew to take them home, besides unnecessarily retaining his papers, and thus preventing him, with a wholly inadequate supply of provisions from proceeding on his voyage." This note, I observe, appears in the papers relating to the foreign relations of the United States transmitted to Congress with the President's message, 1886 (No. 231, page 425.)

I have now the honor to inform you that I am instructed by the Marquis of Salisbury to communicate to you the inclosed copy of a dispatch from the governor-general of Canada, together with copy of an approved minute of the privy council, to which is appended a letter from the collector of customs at Shelburne, inclosing a declara-

tion made by Captain Rose, in which he states that the statements made by him in the affidavit alluded to in your above-mentioned note are *all untrue*.

In communicating these papers to you I am further instructed to ask whether the United States Government have any observations to make thereupon.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.]

*Colonial office to foreign office. (Received June 17.)*

DOWNING STREET, June 17, 1887.

SIR: With reference to the letter from this department of the 27th April, relating to the treatment of the United States fishing vessels *Laura Sayward* and *Jenny Seaverns*, I am directed by Secretary Sir Henry Holland to transmit to you, to be laid before the Marquis of Salisbury, for such action as he may think proper to take upon it, a copy of a dispatch from the governor-general of Canada, with an affidavit by the master of the *Laura Sayward*.

I am, etc.,

JOHN BRAMSTON.

[Inclosure No. 2.]

*The Marquis of Lansdowne to Sir H. Holland.*

GOVERNMENT HOUSE, TORONTO, May 20, 1887.

SIR: With reference to previous correspondence on the subject of the alleged ill-treatment of the United States fishing vessel, *Laura Sayward* and *Jennie Seaverns*, and with especial reference to the affidavit purporting to have been sworn to by Capt. Medeo Rose, of the first-named vessel, copy of which formed an inclosure in Mr. Stanhope's dispatch of the 16th December last, I have the honor to forward herewith a certified copy of an approved minute of my privy council, to which is appended a letter from the collector of customs at Shelburne, inclosing a declaration made by Captain Rose, in which he states that the statements alleged to have been made by him in that affidavit "are all untrue."

I have, etc.,

LANSDOWNE.

[Sub-inclosure.]

*Report of a committee of the honorable the privy council for Canada, approved by his excellency the governor-general in council on May 16, 1887.*

On a report dated the 10th May, 1887, from the minister of marine, and fisheries, submitting, with reference to his report, approved in council on the 23d March last, as to the alleged ill-treatment of the United States fishing vessels *Laura Sayward* and *Jennie Seaverns*, and to the affidavit of Capt. Medeo Rose, of the first-named vessel, the copy of a letter from the collector of customs at Shelburne, Nova Scotia, dated the 20th ultimo, together with an affidavit from Captain Rose, herewith, in which it will be observed that he not only bears



testimony to the generous treatment that had been extended to him when at the port of Shelburne on previous occasions, but also declares that the statements made in the affidavit of the 15th October last, purporting to be sworn to by him, and which affidavit formed the basis of a dispatch from Mr. Bayard, the United States Secretary of State, protesting against the inhuman and inhospitable conduct of the collector of customs at Shelburne, Nova Scotia, to use Captain Rose's own words, "are all untrue."

The committee recommend that your excellency be moved to forward a copy of this minute, together with copies of the papers mentioned, to the right honorable the secretary of state for the colonies.

All which is respectfully submitted for your excellency's approval.

JOHN J. MCGEE,  
*Clerk Privy Council, Canada.*

[Inclosure No. 3.]

*Mr. Atwood to commissioner of customs, Ottawa.*

CUSTOM-HOUSE, SHELburne, April 20, 1887.

SIR: With reference to my letter of the 5th January last and a statement made by Medeo Rose, of schooner *Laura Sayward*, a copy of which was sent me from your department for my report thereon, I beg to state that Captain Rose, with his vessel, is now lying off Sandy Point. He reported and obtained clearance yesterday on board Dominion cutter *Triumph*. On being questioned by Captain Lorway relative to the statement made in October last, he said much of it was untrue, and denied having made it. Inclosed please find a statement signed by Captain Rose in my presence at Sandy Point, sworn to and witnessed by Capt. John Purney, justice of the peace. He made no objection at all to signing it, and admits that this statement is true in every particular. Will you kindly have it forwarded to John Tilton, esq., deputy minister of fisheries?

I am, etc.,

W. W. ATWOOD, *Collector.*

[Inclosure No. 4.]

*Declaration of the captain of the Laura Sayward.*

I, Medeo Rose, master of the schooner *Laura Sayward*, of Gloucester, do solemnly declare and say that on the 6th October last I arrived at the port of Shelburne, Nova Scotia, and reported my vessel at the custom-house some time after 4 p. m.

Stated to the collector that I was from Western Banks, bound home, and required provisions, as follows, viz: 7 pounds of sugar, 3 pounds of coffee, 1 bushel of potatoes, 2 pounds of butter, and to fill water. This was all. The collector told me to fill the water, but as there was no provision made in the treaty for the purchase of supplies or stores, he would telegraph the department at Ottawa at once; that no doubt they would be allowed; and I consented to wait until the next morning for a reply.

I called at the custom-house early the next morning, before 7 o'clock; stated that, as the wind was fair and blowing a strong breeze, I

would not wait for a reply to telegram, but take a clearance, which the collector gave me. I was treated kindly, allowed to enter my vessel after customs hours, and a clearance granted me next morning before the office was supposed to be opened. I was at the port again in November, on my way to the banks, and the collector allowed me to report my vessel inwards and outwards and gave me a clearance at 8 in the evening.

The statements purporting to have been made by me to the effect that the collector refused to give me my papers when I asked for them, also that this treatment towards me was harsh and cruel, driving myself and crew to sea, having but little flour and water, etc., are all untrue.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of an act of Parliament entitled "An act for the suppression of voluntary and extrajudicial oaths."

MEDEO ROSE.

Taken and declared before me, at Sandy Point, this 20th day of April, A. D. 1887.

JOHN PURNEY,  
*Justice of the Peace.*

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*Mr. Bayard to Sir L. S. Sackville West.*

DEPARTMENT OF STATE,  
*Washington, October 31, 1887.*

SIR: On the 19th of July last I had the honor to receive from you a letter, dated the day previous, inclosing a printed copy of a declaration made by Medeo Rose, formerly master of the schooner *Laura Sayward*, of Gloucester, Mass., in which he controverts certain statements theretofore made by him under oath, in relation to his treatment by Mr. Atwood, collector of customs at Shelburne, Nova Scotia, on the 13th of October.

Upon receiving your letter I at once communicated its contents to the collector of the port of Gloucester, Mass., through whom the original complaint had been forwarded to this Department.

To-day, for the first time, I was informed that on the 5th of August last a reply and sworn statement, by way of explanation of this variance between his affidavit of October 13, 1886, and his subsequent declaration at Sandy Point, Nova Scotia, dated April 20, 1887, had been in my absence received at this Department, and by inadvertence not laid before me until to-day.

I therefore now inclose a copy of the affidavits of Captain Rose and Augustus Rogers, made at Gloucester, Mass., on August 3 last, before a notary public, by which it appears that his declaration of April 20, 1887, was not voluntary, but was obtained from him by the collector, Atwood through fear and intimidation, under circumstances fully stated.

I should transmit the documents without further comment, but that, in closing your note to me of July 18 last, you stated that you were further "instructed to ask whether the United States Government have any observations to make thereupon."



In my reply to you on the 19th of July, I promised to comply with your request, and for that reason I now remark that the incident which has been the subject of this correspondence affords but another illustration and additional evidence, if any were needed, of the unwisdom of imperiling the friendly relations of two kindred and neighboring countries by intrusting the interpretation and execution of a treaty between them to the discretion of local and petty officials, and vesting in them powers of administration wholly unwarranted and naturally prolific of the irritations which wise and responsible rulers will always seek to avoid.

On the eve of a negotiation touching closely the honor and interests of two great nations, I venture to express the hope that the anticipated result of our joint endeavors to harmonize all differences may render it hereafter impossible to create a necessity for those representing our respective Governments to be called upon to consider such questions as are presented in the case of the *Laura Sayward*.

I have, etc.,

T. F. BAYARD.

[Inclosure.]

*Affidavits of Capt. Medeo Rose and Augustus Rogers.*

I, Medeo Rose, of Gloucester, being under oath, do depose and say, that I was master of the schooner *Laura Sayward* during the year 1886, and that I am now master of the schooner *Gleaner* of Gloucester.

On April 18, 1887, I went into the lower harbor of Shelburne, Nova Scotia, in said schooner *Gleaner* for shelter and water.

On the morning of April 19, Mr. Atwood, the collector of customs, with two men wearing badges, which I supposed were Government badges, came on board. Their appearance filled me with fear, for I felt some trouble must be in store for me when Collector Atwood would leave his office and come so far (about 4 miles) to board my vessel. I invited him into the cabin, where he showed me a copy of my statement of October 13, 1886, in regard to the treatment I received from him when in schooner *Laura Sayward* (October 5, 1886), and asked me if I made that statement. I told him I did. Well, said he, everything in that statement is false. I told him my statement was true. He then produced a prepared written statement, which he read to me, which stated that my statement of October 13 was untrue, and told me I must go on shore and sign it. Being nervous and frightened, and fearing trouble if I refused, I went on shore with him to the store of Mr. Purney, and before Mr. Purney signed and swore to the statement.

On the afternoon of the same day, realizing the wrong I had done, I hired a team and, with one of my crew (Augustus Rogers), went to the custom-house and asked Collector Atwood to read to me the statement I had signed. He did so, and I again told him it was wrong and that my first statement was true.

He said I did not ask for all the articles mentioned in my first statement; that he did not refuse me my paper, and also that that statement might be the cause of his removal from his office. I told him I did not want to injure him, and I did not want to make myself out a liar at Washington.

About the 3d day of June last I went into Shelburne again solely to get a copy of the last statement. I went to the custom-house, taking the same man (Augustus Rogers) with me, and asked Collector Atwood for a copy of the statement.

He refused to give it to me, and said my lawyers had been advising me what to do and that I need never expect a favor from him.

The above is a true statement of the case. The statement obtained from me by Collector Atwood was obtained through my fear of seizure if I refused.

MEDEO ROSE.

I, Augustus Rogers, one of the crew of schooner *Gleaner*, being duly sworn, do depose and say, that I went with Capt. Medeo Rose to the custom-house at Shelburne, Nova Scotia, on the 19th day of April last, and also on the 3d day of June. I heard his conversation with Collector Atwood on both occasions, and hereby certify that the statements of those interviews, as made above, are correct and true.

AUGUSTUS ROGERS.

MASS., ESSEX, ss:

Personally appeared Medeo Rose and Augustus Rogers, and made oath to the truth of the above statements before me.

[SEAL.]

AARON PARSONS,  
Notary Public.

AUGUST 3, 1887.

*Mr. West to Mr. Bayard.*

WASHINGTON, April 25, 1888. (Received April 26.)

SIR: In accordance with instructions which I have received from the Marquis of Salisbury, I have the honor to communicate to you copy of a dispatch from the governor-general of Canada to Her Majesty's secretary of state for the colonies, together with copy of a minute of the privy council on the subject of the seizure of the United States fishing vessels, *David J. Adams* and *Ella M. Doughty*.

I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure No. 1.]

*Lord Landsdowne to Lord Knutsford.*

GOVERNMENT HOUSE,  
Ottawa, March 21, 1888.

MY LORD: I have the honor to transmit to you a copy of an approved minute of a committee of the privy council, concurring in a recommendation of my minister of justice, who has advised that for the reasons stated in his report the proceedings against the United States fishing vessels *D. J. Adams* and *E. M. Doughty*, libeled in the vice-admiralty court at Halifax for violation of the statutes relating to fishing by foreign vessels, be discontinued upon the understanding that the owners or their representatives give an undertaking which will prevent such a step being made the basis for a claim for damages or expenses.

I have, etc.,

LANDSDOWNE.



[Sub-Inclosure.]

*Report of a committee of the privy council approved by his excellency the governor-general in council on 8th March, 1888.*

On a report dated 24th February, 1888, from the minister of justice submitting for your excellency's consideration the cases of the United States fishing-vessels *David J. Adams* and *E. M. Doughty*, the minister of justice observes that these vessels were libeled in the vice-admiralty court at Halifax for violation of the statutes relating to "fishing by foreign vessels", and relating to the convention between Great Britain and the United States of October 20, 1888.

The proceedings were understood by the counsel on the part of the Crown to be closed early in the year 1886, but an application was made by the counsel for the defense for a protracted adjournment in order that further evidence might be taken.

That the effect of the adjournment which was granted on this application was that the causes were not heard until June, 1887, when they were heard by the Hon. J. McDonald, judge of the vice-admiralty court for the Province of Nova Scotia.

Judgment was reserved and has not yet been delivered.

The minister desires to remind your excellency that these proceedings were taken for the purpose of asserting and establishing the right of Canada, under the convention of 1818, to prevent the purchase of bait and other fishing supplies in Canadian ports by the United States fishing vessels and to prevent such vessels from entering such ports for the shipping of crews.

As, however, the result of the negotiations recently concluded at Washington has been to show that no further difference of opinion between the two Governments upon the points is to be apprehended, it appears to the minister of justice unnecessary that a judicial decision should be sought to affirm the right above mentioned.

The minister therefore recommends that he be authorized to discontinue the proceedings against the vessels above mentioned, provided the owners or their representatives give an undertaking which will prevent such a step being made the basis for a claim for damages or expenses.

The committee, concurring in the recommendation of the minister of justice, advise that a copy of this minute be forwarded to the secretary of state for the colonies in order that the reasons for this action above recommended may be in possession of Her Majesty's Government.

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*Mr. West to Mr. Bayard.*

WASHINGTON, May 2, 1888. (Received May 3.)

SIR: Under date of the 21st April you inclosed to me copy of a telegram which had been received from the United States consular agent at St. Pierre and Miquelon (a French possession) stating that ten American schooners were in that port which had been prevented from getting bait in Newfoundland, and that they were willing to pay the \$1.50 per ton in order to obtain it. You requested me at the same time to ascertain by telegraph whether licenses could be ob-

tained under the *modus vivendi* which provided for their issue by the act of the British plenipotentiaries. I have now the honor to inclose to you herewith transcript of a telegram which I have received from the Marquis of Salisbury to the effect that the Government of Newfoundland have not forbidden the sale of bait to American vessels, that several have been already supplied, and that licenses therefore are unnecessary.

Trusting that this information will be found satisfactory,  
I have, etc.,

L. S. SACKVILLE WEST.

[Inclosure.]

*Transcript of telegram from Marquis of Salisbury to Sir L. West,  
dated May 1, 1888.*

The Government of Newfoundland have not forbidden sale of bait to American vessels; several have been already supplied and licenses therefore are unnecessary.

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*Mr. Bayard to Mr. West.*

DEPARTMENT OF STATE,  
Washington, May 4, 1888.

SIR: I have the honor to acknowledge the receipt of your note of the 2d instant, communicating a copy of Lord Salisbury's telegram to you of the 1st instant, to the effect that the Government of Newfoundland has not forbidden the sale of bait to American vessels, that several have already been supplied, and that licenses are therefore unnecessary.

I beg to renew the expression of satisfaction contained in my personal note of the 1st instant, and trust the amicable disposition manifested may be productive of good results to the relations of the two countries.

I have, etc.,

T. F. BAYARD.

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*Mr. West to Mr. Bayard.*

WASHINGTON, May 30, 1888. (Received May 31.)

SIR: I am instructed by the Marquis of Salisbury to communicate to you the inclosed form of license which the Dominion Government proposes to issue for American fishing vessels under the *modus vivendi*, which has been put in operation.

I have, etc.,

L. S. SACKVILLE WEST.



[Inclosure.]

*License to United States Fishing Vessels.*

\_\_\_\_\_, of the United States fishing vessels \_\_\_\_\_, and tons register, of \_\_\_\_\_, having paid to the undersigned collector of customs at the port of \_\_\_\_\_ the sum of \_\_\_\_\_, the privilege is hereby granted to said fishing vessel to enter the bays and harbors of the Atlantic coasts of Canada and Newfoundland for the purchase of bait, ice, seines, lines, and all other supplies and outfits and the transshipment of catch and shipping of crews.

This license shall continue in force for one year from the date thereof, and is issued in pursuance of the act of the Parliament of Canada, chapter \_\_\_\_\_, of \_\_\_\_\_ 1888, entitled "An act respecting a certain treaty between Her Britannic Majesty and the President of the United States," and in pursuance of agreement between the Government of Canada and the Government of Newfoundland.

This license, while conferring the above mentioned privileges, does not dispense with a due observance by the holder, or any other person, of the laws of Canada and of Newfoundland.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1888.

\_\_\_\_\_,  
*Minister of Marine and Fisheries.*

\_\_\_\_\_,  
*Collector of Customs at the Port of \_\_\_\_\_.*

Name, \_\_\_\_\_

Master or owner, \_\_\_\_\_.

PERIOD FROM 1905 TO 1909.

*Mr. Root to Sir M. Durand.*

DEPARTMENT OF STATE, WASHINGTON,  
*October 12, 1905. (Received at Foreign Office, October 27.)*

DEAR MR. AMBASSADOR: I have just telegraphed you at Lenox expressing my wish for an interview at your early convenience. The occasion for the request is a despatch which I have just received from Senator Lodge, containing the following statement based, I assume, upon information received from his constituents in Massachusetts, who are interested in the fisheries:—

“Newfoundland cruiser ‘Fiona’ has arrived in Bay of Islands, on Treaty Coast, with Minister of Marine and Fisheries on board. The Minister has forbidden all vessels on American register to fish on Treaty Coast, where they now are, and where they have fished unmolested since 1818.”

The American boats are already upon the Treaty Coast. I have felt bound to advise Senator Lodge that I have no doubt of their right to proceed to take fish upon the ground where the Minister of Marine and Fisheries of Newfoundland has prohibited them from fishing. The history of the fisheries and the numerous difficulties which have arisen upon the Treaty Coast indicate that this conflict between the orders of the Newfoundland Government and the rights of our fishermen, as we conceive them to be, may lead to very serious and regrettable incidents. It seems unfortunate that the Government of Newfoundland should undertake to prohibit a practice justified by the construction of the various Treaties relating to the Newfoundland fisheries for more than a century without any suggestion by the Government of Great Britain that that Government proposes any change of construction, and without any exchange of views between the two Governments upon the subject.

I shall wish to satisfy you that immediate representation should be made to the Government of Newfoundland, which will lead to a different way of raising and disposing of any questions which there may be regarding our fishermen's rights under the existing treaty.

I am, &c.

(Signed)

ELIHU ROOT.

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*Sir H. M. Durand to Mr. Root.*

BRITISH EMBASSY,  
*Washington, October 14, 1905.*

DEAR MR. SECRETARY: I duly received, after my return from the State Department last night, your letter of the 12th October regarding the Newfoundland fishery question.



As I told you, I have no information regarding the alleged action of the Newfoundland Government in forbidding the American vessels to fish upon the treaty coast, but I have telegraphed for full information both to the Foreign Office and to Newfoundland direct.

Meanwhile, I trust that until we know for certain what the facts are you will do what you can to prevent any action on the part of the American fishermen which could tend to complicate the situation. I will do my best to prevent any such action on the part of our people.

I remain, etc.,

H. M. DURAND.

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*Sir H. M. Durand to Mr. Root.*

BRITISH EMBASSY,  
Washington, October 14, 1905.

DEAR MR. SECRETARY: In answer to my telegram sent last night regarding the alleged action of the Newfoundland Minister of Marine and Fisheries in forbidding American vessels to fish on the treaty coast, the Governor of Newfoundland telegraphs as follows:

"Your telegram this morning. My Ministers regard report entirely improbably (*sic*). Minister Fisheries on *Fiona*. Duty not connected American fisheries. Will obtain report when Minister Fisheries accessible telegraph."

If, therefore, the alleged prohibition has been issued it is evidently not by direction of the Newfoundland Government.

I hope the Minister's report, when received, will clear up the matter satisfactorily.

I remain, etc.,

H. M. DURAND.

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*Sir H. M. Durand to Mr. Root.*

BRITISH EMBASSY,  
Washington, October 19, 1905.

DEAR MR. SECRETARY: In continuation of my letter of the 14th instant, I am now able to inform you that a telegram has been received by the Government of Newfoundland from the Minister of Marine. The Minister says that the statement that he has forbidden vessels on American register to fish on the treaty coast is without foundation. He has exercised no interference whatever with such vessels. Therefore, whatever may be the facts in regard to the alleged interference by subordinate officials, about which you spoke to me to-day, it is clear that the statement originally received by you was not correct.

I remain, etc.,

H. M. DURAND.

*Mr. Root to Sir M. Durand.*

DEPARTMENT OF STATE, WASHINGTON,  
*October 19, 1905. (Received at Foreign Office, October 27.)*

EXCELLENCY: Mr. Gardner, the Representative in Congress of the Gloucester district, has placed in my hands a number of despatches received by him from masters of American vessels now on the Newfoundland coast. These despatches are answers to inquiries sent by him at my request for the purpose of ascertaining definitely, if possible, what is the precise difficulty there.

These despatches agree in the statement that vessels of American registry are forbidden to fish on the Treaty Coast. One captain says that he was informed that he could not fish by the Inspector of the Revenue Protection Service of Newfoundland, and several of them that they have been ordered not to take herring by the Collector of Customs at Bonne Bay, Newfoundland.

It would seem that the Newfoundland officials are making a distinction between two classes of American vessels. We have vessels which are registered, and vessels which are licensed to fish and not registered. The licence carries a narrow and restricted authority; the registry carries the broadest and most unrestricted authority. The vessel with a licence can fish, but cannot trade; the registered vessels can lawfully both fish and trade. The distinction between the two classes in the action of the Newfoundland authorities would seem to have been implied in the despatch from Senator Lodge which I quoted in my letter of the 12th, and the imputation of the prohibition of the Minister of Marine and Fisheries may perhaps have come from the port officers, in conversation with the masters of American vessels, giving him as their authority for their prohibitions.

As the buying of herring and bait fish, which until recently has been permitted for a good many years in Newfoundland, is trading, the American fishing fleet have come very generally to take an American registry, instead of confining themselves to the narrower fishing licence, and far the greater part of the fleet now in northern waters consists of registered vessels. The prohibition against fishing under an American register substantially bars the fleet from fishing. American vessels have also apparently been in the habit of entering at the Newfoundland custom-houses and applying for a Newfoundland licence to buy or take bait, and I gather from all the information I have been able to get that both the American masters and the Customs officials have failed to clearly appreciate the different conditions created by the practical withdrawal of all privileges on the part of Newfoundland and the throwing of the American fishermen back upon the bare rights which belong to them under the Treaty of 1818.

I am confident that we can reach a clear understanding regarding those rights and the essential conditions of their exercise, and that a statement of this understanding to the Newfoundland Government, for the guidance of its officials on the one hand, and to our American fishermen for their guidance on the other, will prevent causeless injury and possible disturbances, such as have been cause for regret in the past history of the north-eastern fisheries.

I will try to state our view upon the matters involved in the situation, which now appears to exist upon the Treaty Coast. We consider that—



1. Any American vessel is entitled to go into the waters of the Treaty Coast and take fish of any kind.

She derives this right from the Treaty (or from the conditions existing prior to the Treaty and recognized by it) and not from any permission or authority proceeding from the Government of Newfoundland.

2. An American vessel seeking to exercise the Treaty right is not bound to obtain a licence from the Government of Newfoundland, and, if she does not purpose to trade as well as fish, she is not bound to enter at any Newfoundland custom-house.

3. The only concern of the Government of Newfoundland with such a vessel is to call for proper evidence that she is an American vessel, and, therefore, entitled to exercise the Treaty right, and to have her refrain from violating any laws of Newfoundland not inconsistent with the Treaty.

4. The proper evidence that a vessel is an American vessel and entitled to exercise the Treaty right is the production of the ship's papers of the kind generally recognized in the maritime world as evidence of a vessel's national character.

5. When a vessel has produced papers showing that she is an American vessel, the officials of Newfoundland have no concern with the character or extent of the privileges accorded to such a vessel by the Government of the United States. No question as between a registry and licence is a proper subject for their consideration. They are not charged with enforcing any laws or regulations of the United States. As to them, if the vessel is American she has the Treaty right, and they are not at liberty to deny it.

6. If any such matter were a proper subject for the consideration of the officials of Newfoundland, the statement of this Department that vessels bearing an American registry are entitled to exercise the Treaty right should be taken by such officials as conclusive.

If your Government sees no cause to dissent from these propositions, I am inclined to think a statement of them as agreed upon would resolve the immediate difficulty now existing on the Treaty Coast.

I have, however, to call your attention to a further subject, which I apprehend may lead to further misunderstanding in the near future if it is not dealt with now. That is, the purposes of the Government of Newfoundland in respect of the treatment of American fishing-vessels as exhibited in a Law enacted during the past summer by the Legislature of that Colony, under the title "An Act respecting Foreign Fishing-Vessels."

This Act appears to be designed for the enforcement of laws previously enacted by Newfoundland, which prohibited the sale to foreign fishing-vessels of herring, caplin, squid, or other bait fishes, lines, seines, or other outfits or supplies for the fishery or the shipment by a foreign fishing-vessel of crews within the jurisdiction of Newfoundland.

The Act of last summer respecting foreign fishing-vessels provides:—

"Section 1. Any Justice of the Peace, sub-collector, preventive officers, fishery warden, or constable, may go on board any foreign fishing-vessel being within any port of the coasts of this island, or hovering within British waters within 3 marine miles of any of the coasts, bays, creeks, or harbours in this island, and may bring such

foreign fishing-vessel into port, may search her cargo and may examine the master upon oath touching the cargo and voyage, and the master or person in command, shall answer truly such questions as shall be put to him under a penalty not exceeding 500 dollars. And if such foreign fishing-vessel has on board any herring, caplin, squid, or other bait fishes, ice, lines, seines, or other outfits or supplies for the fishery purchased within any port on the coast of this island, or within the distance of 3 marine miles from any coasts, bays, creeks, or harbours of this island, or if the master of the said vessel shall have engaged or attempted to engage any person to form part of the crew of the said vessel in any port or on any part of the coasts of this island, or has entered such waters for any purpose not permitted by Treaty or Convention for the time being in force such vessel and the tackle, rigging, apparel, furniture, stores, and cargo thereof shall be forfeited.

"Section 3. In any prosecution under this Act the presence on board any foreign fishing-vessel in any port of this island, or within British waters aforesaid of any caplin, squid, or other bait fishes, of ice, lines, seines, or other outfits or supplies for the fishery shall be *primâ facie* evidence of the purchase of the said bait, fishes, and supplies and outfits within such port or waters."

It seems plain that the provisions above quoted constitute a warrant to the officers named to interfere with and violate the rights of American fishing-vessels under the Treaty of 1818.

The 1st section authorizes any of the officers named to stop an American vessel while fishing upon the Treaty Coast and compel it to leave the fishing grounds, to prevent it from going to the places where the fish may be, to prevent it departing with the fish which it may have taken, and to detain it for an indefinite period during a search of the cargo and an examination of the master under oath under a heavy penalty.

It is to be observed that this section does not require that the vessel shall have been charged with any violation of the laws of Newfoundland, or even that she shall have been suspected of having violated the laws of Newfoundland as a condition precedent to compelling it to desist from the exercise of its Treaty rights, and virtually seizing it and taking it into port. In the consideration of this provision, it is unnecessary to discuss any question as to the extent to which American vessels may be interfered with in the exercise of their Treaty rights pursuant to judicial proceedings based upon a charge of violation of law, or even upon reasonable ground to believe that any law has been violated, for the authority of the Acts authorized appears to be part of no such proceeding.

When we consider that the minor officials named in the Act, invested with this extraordinary and summary power, are presumptively members of the fishing communities, in competition with which the American fishermen are following their calling, it is plain that in denying the right of the Government of Newfoundland to do what this section provides for we are not merely dealing with a theoretical question, but with the probability of serious injustice.

The 3rd section of the Act, above quoted in full, makes the presence on board of an American vessel of the fish, gear—the implements necessary to the exercise of the Treaty right—*primâ facie* evidence of a criminal offence against the laws of Newfoundland, and it also



makes the presence on board the vessel of the fish which the vessel has a right to take under Treaty *primâ facie* evidence of a criminal offence under the laws of Newfoundland. This certainly cannot be justified. It is, in effect, providing that the exercise of the Treaty right shall be *primâ facie* evidence of a crime.

I need not argue with the Government of Great Britain that the 1st section of this Act purports to authorize the very kind of official conduct which led to the establishment in England of the rule against unreasonable searches and seizures, now firmly embedded in the jurisprudence of both nations. Nor need I argue that American vessels are of right entitled to have on them in the waters of the Treaty Coast both fish of every kind, and the gear for the taking of fish, and that a law undertaking to make that possession *primâ facie* proof of crime deprives them of that presumption of innocence to which all citizens of Great Britain and America are entitled. When the Legislature of Newfoundland denies these rights to American fishing-vessels, it imposes upon them a heavy penalty for the exercise of their rights under the Treaty, and we may reasonably apprehend that this penalty will be so severe in its practical effect as to be an effectual bar to the exercise of the Treaty right.

I feel bound to urge that the Government of Great Britain shall advise the Newfoundland Government that the provisions of law which I have quoted are inconsistent with the rights of the United States under the Treaty of 1818, and ought to be repealed; and that, in the meantime, and without any avoidable delay, the Governor in Council shall be requested by a Proclamation which he is authorized to issue under the 8th section of the Act respecting Foreign Fishing-Vessels, to suspend the operation of the Act.

There is still another phase of this subject to which I must ask your attention. I am advised that there is a very strong feeling among the Newfoundland fishermen on the Treaty Coast against the enforcement of the Newfoundland Act prohibiting the sale of bait, and that at a recent mass meeting of fishermen at the Bay of Islands, Resolutions were adopted urging the repeal or suspension of that Act, and containing the following clauses:—

“If our requests are not granted immediately we shall be compelled, in justice to ourselves and families, to seek other ways and means to engage with the Americans.

“We would also direct the attention of his Excellency the Governor in Council to what took place in Fortune Bay a few years ago when Captain Solomon Jacobs seined herring against the wishes of the people, and the result. If a similar occurrence should take place here, who will be responsible?”

This resolution indicates the existence of still another source from which, if not controlled, may come most unfortunate results when the American fishermen proceed to the exercise of their Treaty rights, that is, the Newfoundland fishermen themselves acting independently of their Government.

You are aware that for a considerable period American fishing-vessels, instead of themselves taking herring, caplin, and squid upon the Treaty Coast, have been in the habit of buying those fish from the Newfoundland fishermen. For many of the Newfoundland fishermen this trade has been a principal means of support. That has been especially so in and about the Bay of Islands. It has been

profitable to the local fishermen, and it has been for the Americans a satisfactory substitute for the exercise of their Treaty right to catch the fish themselves. It is, indeed, not unnatural that these fishermen should struggle in every way open to them to prevent the loss of their means of support, and that if they cannot control their own Government so as to secure permission to sell herring and bait, they should seek to prevent the Americans from taking the bait, in the hope that as the result of that prevention, their profitable trade may be restored.

The Resolution which I have quoted referring to the Fortune Bay case is a clear threat of violence to prevent the exercise of the Treaty right. If the threat should be carried out it is too much to expect that some at least of the American fishermen will not refuse to yield to lawless force which seeks to deprive them of their rights and of their means of livelihood.

We shall do everything in our power to prevent such a collision, and we should indeed deeply deplore it, but the true and effective method of prevention plainly must be the exercise of proper control by the Government of Newfoundland over the fishermen of Newfoundland, and it seems to me that the danger is sufficiently real and imminent to justify me in asking that the Government of Great Britain shall take speedy steps to bring about the exercise of such control.

I have, &c.

(Signed)

ELIHU ROOT.

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*Sir H. M. Durand to Mr. Root.*

BRITISH EMBASSY,  
Washington, October 20, 1905.

SIR: I have the honor to acknowledge the receipt of your dispatch dated the 19th of October, regarding the Newfoundland fishery question.

I do not think it desirable at present to make any detailed observations on this dispatch, but I have sent a copy to His Majesty's Government and to the governor of Newfoundland.

I note with satisfaction that the Government of the United States will do everything in their power, as we on our side shall certainly do, to prevent any collision between American fishermen and those of Newfoundland, and I trust that they will also do everything in their power to prevent the occurrence of any other untoward incident pending inquiry into the question of the Newfoundland "Act respecting foreign fishing vessels," and the supposed misapprehension on the part of certain Newfoundland officials with regard to the status of vessels on the American register.

The Government of the United States can not doubt the desire of His Majesty's Government to adhere strictly to all treaty provisions, and all that seems required in order to bring about a satisfactory conclusion in a case of this nature is the exercise by those concerned, on both sides, of patience and temper in the assertion of what they conceive to be their rights. It would be most unfortunate if the case were to be complicated by any precipitate action on the part of American fishermen or local officials. I will do all I can to prevent such



action on the part of the local officials and look to you with confidence to prevent it on the part of the American fishermen.

H. M. DURAND.

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*Mr. Root to Sir H. M. Durand.*

DEPARTMENT OF STATE,  
*Washington, October 20, 1905.*

MY DEAR SIR MORTIMER: I have received from the Secretary of Commerce and Labor a letter received by him from the agent on the *Grampus*, the Fish Commission boat on the Newfoundland coast, which contains the following:

"No obstacles placed in the way of American vessels sailing from home port under fishing license to taking herring on treaty coast. Government officials here state that vessels under register not permitted to take herring."

It would appear from this that the trouble is, as I had already gathered from the telegrams of the various ships' captains, in the making of the distinction by the subordinate Newfoundland officials between registered and licensed vessels.

Can not the Newfoundland Government be advised that they are entitled to make no such distinction?

Faithfully, yours,

ELIHU ROOT.

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*Sir Edward Grey to Mr. Whitelaw Reid.*

FOREIGN OFFICE, *February 2, 1906.*

YOUR EXCELLENCY: The views of the United States' Government with respect to the position of affairs on the coast of Newfoundland, and to the rights of American fishing-vessels in those waters under the Treaty of the 20th October, 1818, as set forth in Mr. Root's note to His Majesty's Ambassador at Washington of the 19th October, 1905, have received the serious attention of His Majesty's Government.

I have now the honour to inclose a Memorandum dealing *seriatim* with the six propositions formulated by Mr. Root, and with his observations with regard to some of the provisions of recent Newfoundland legislation for the regulation of the fisheries.

As, owing to the prompt measures adopted and to the conciliatory spirit displayed by both Governments, the fishing season has now closed without any collision between the British and American fishermen, or the development of any such friction as was at one time anticipated, it is unnecessary to deal more particularly with the latter portion of Mr. Root's note, which was devoted to that side of the question.

I have, &c.

(Signed)

EDWARD GREY.

[Inclosure.]

*Memorandum.*

Mr. Root's note to Sir M. Durand of the 19th October, 1905, on the subject of the United States' fishery in the waters of Newfoundland under the Convention of the 20th October, 1818, may be divided into three parts.

The first deals with complaints which had reached the United States' Government to the effect that vessels of United States' registry had been forbidden by the Colonial authorities to fish on the Treaty Coast, the second with the provisions of "The Newfoundland Foreign Fishing-Vessels Act, 1905," and the third with the possibility of a lawless and violent interruption of the United States' fishery by the inhabitants of the Bay of Islands.

The complaints referred to in the first part of Mr. Root's note were at once brought to the notice of the Government of Newfoundland, and they replied that there had been no attempt to prevent American fishermen from taking fish. The complaints in question appear to have been based on some misunderstanding, and the subsequent course of the fishery proved that the apprehensions on the part of the United States' Government to which they gave rise were, fortunately, not well founded.

His Majesty's Government, however, agree with the United States' Government in thinking that inasmuch as the privileges which citizens of the United States have for many years enjoyed of purchasing bait and supplies and engaging men in Newfoundland waters have recently been withdrawn and American fishermen have consequently, in Mr. Root's words, been thrown back upon their rights under the Convention of 1818, it is desirable that a clear understanding should be reached regarding those rights and the essential conditions of their exercise, and they have accordingly given the most careful consideration to the six propositions advanced in Mr. Root's note as embodying the views of the United States' Government on the subject.

They regret, however, that they are unable to record their assent to these propositions without some important qualifications.

Proposition 1 states:—

"Any American vessel is entitled to go into the waters of the Treaty Coast and take fish of any kind. She derives this right from the Treaty (or from the conditions existing prior to the Treaty and recognized by it) and not from any permission or authority proceeding from the Government of Newfoundland."

The privilege of fishing conceded by Article I of the Convention of 1818 is conceded, not to American vessels, but to inhabitants of the United States and to American fishermen.

His Majesty's Government are unable to agree to this or any of the subsequent propositions if they are meant to assert any right of American vessels to prosecute the fishery under the Convention of 1818 except when the fishery is carried on by inhabitants of the United States. The Convention confers no rights on American vessels as such. It enures for the benefit only of inhabitants of the United States.

Proposition 2 states:—

"An American vessel seeking to exercise the Treaty right is not bound to obtain a licence from the Government of Newfoundland,



and, if she does not purpose to trade as well as fish, she is not bound to enter at any Newfoundland custom-house."

His Majesty's Government agree that the Government of Newfoundland could not require that American fishermen seeking to exercise the Treaty right should take out a licence from the Colonial Government. No licence is required for what is a matter of right, and no such licence has, His Majesty's Government are informed, been, in fact, required.

With the last part of the proposition it will be more convenient to deal in conjunction with proposition 3.

Proposition 3 states:—

"The only concern of the Government of Newfoundland with such a vessel is to call for proper evidence that she is an American vessel, and therefore entitled to exercise the Treaty right, and to have her refrain from violating any laws of Newfoundland not inconsistent with the Treaty."

It has already been pointed out that the Convention of 1818 confers no rights on American vessels as such, and that the exercise of the right of fishing under the Convention is subject to the condition that the fishing is carried on by inhabitants of the United States. His Majesty's Government, however, agree that no law of Newfoundland should be enforced on American fishermen which is inconsistent with their rights under the Convention.

Mr. Root's note does not give any indication of what laws of the Colony would be regarded by the United States' Government as inconsistent with the Convention if applied to American fishermen. The opinion of His Majesty's Government on this point is as follows:—

The American fishery, under Article I of the Convention of 1818, is one carried on within the British jurisdiction and "in common with" British subjects. The two Governments hold different views as to the nature of this Article. The British Government consider that the war of 1812 abrogated that part of Article III of the Treaty of Peace of 1783 which continued to inhabitants of the United States "the liberty" (in the words used by Mr. Adams to Earl Bathurst in his note of the 25th September, 1815) "of fishing and drying, and curing their fish within the exclusive jurisdiction on the North American coasts to which they had been accustomed while themselves forming a part of the British nation," and that consequently Article I of the Convention of 1818 was a new grant to inhabitants of the United States of fishing privileges within the British jurisdiction. The United States' Government, on the other hand, contend that the war of 1812 had not the effect attributed to it by the British Government, and that Article I of the Convention of 1818 was not a new grant, but merely a recognition (though limited in extent) of privileges enjoyed by inhabitants of the United States prior, not only to the war, but to the Treaty of 1783. Whichever of these views be adopted, it is certain that inhabitants of the United States would not now be entitled to fish in British North American waters but for the fact that they were entitled to do so when they were British subjects. American fishermen cannot therefore rightly claim to exercise their right of fishery under the Convention of 1818 on a footing of greater freedom than if they had never ceased to be British subjects. Nor consistently with the terms of the Convention can they claim to exercise it on a footing of greater freedom than the British subjects "in common

with" whom they exercise it under the Convention. In other words, the American fishery under the Convention is not a free but a regulated fishery, and, in the opinion of His Majesty's Government, American fishermen are bound to comply with all Colonial Laws and Regulations, including any touching the conduct of the fishery, so long as these are not in their nature unreasonable, and are applicable to all fishermen alike. One of these Regulations prohibits fishing on Sundays. His Majesty's Government have received information that several breaches of this Regulation were committed by American fishermen during the past fishing season. This Regulation has been in force for many years, and looking to the insignificant extent to which American fishermen have exercised their right of fishery on the Treaty Coast in the past, it cannot be regarded as having been made with the object of restricting the enjoyment of that right. Both its reasonableness and its *bona fides* appear to His Majesty's Government to be beyond question, and they trust that the United States' Government will take steps to secure its observance in the future.

As regards the treatment of American vessels from which American fishermen exercise the Treaty right of fishery, His Majesty's Government are prepared to admit that, although the Convention confers no rights on American vessels as such, yet since the American fishery is essentially a ship fishery, no law of Newfoundland should be enforced on American fishing-vessels which would unreasonably interfere with the exercise by the American fishermen on board of their rights under the Convention. The United States' Government, on their part, admit, in Mr. Root's note, that the Colonial Government are entitled to have an American vessel engaged in the fishery refrain from violating any laws of Newfoundland not inconsistent with the Convention, but maintain that if she does not purpose to trade, but only to fish, she is not bound to enter at any Newfoundland custom-house.

Mr. Root's note refers only to the question of entry inwards, but it is presumed that the United States' Government entertain the same views on the question of clearing outwards. At all events, American vessels have not only passed to the fishing grounds in the inner waters of the Bay of Islands without reporting at a Colonial custom-house, but have also omitted to clear on returning to the United States. In both respects they have committed breaches of the Colonial Customs Law, which, as regards the obligations to enter and to clear, makes no distinction between fishing- and trading-vessels.

His Majesty's Government regret not to be able to share the view of the United States' Government that the provisions of the Colonial Law which impose those obligations are inconsistent with the Convention of 1818, if applied to American vessels which do not purpose to trade, but only to fish. They hold that the only ground on which the application of any provisions of the Colonial Law to American vessels engaged in the fishery can be objected to is that it unreasonably interferes with the exercise of the American right of fishery.

It is admitted that the majority of the American vessels lately engaged in the fishery on the western coast of the Colony were registered vessels, as opposed to licensed fishing-vessels, and as such were at liberty both to trade and to fish. The production of evidence of the United States' registration is therefore not sufficient to establish



that a vessel, in Mr. Root's words, "does not purpose to trade as well as fish," and something more would seem clearly to be necessary. The United States' Government would undoubtedly be entitled to complain if the fishery of inhabitants of the United States were seriously interfered with by a vexatious and arbitrary enforcement of the Colonial Customs laws, but it must be remembered that, in proceeding to the waters in which the winter fishery is conducted, American vessels must pass in close proximity to several custom-houses, and that in order to reach or leave the grounds in the arms of the Bay of Islands, on which the fishery has been principally carried on during the past season, they have sailed by no less than three custom-houses on the shores of the bay itself. So that the obligation to report and clear need not in any way have interfered with a vessel's operations. It must also be remembered that a fishery conducted in the midst of practically the only centres of population on the west coast of the Colony affords ample opportunities for illicit trade, and consequently calls for careful supervision in the interests of the Colonial revenue.

The provisions in question are clearly necessary for the prevention of smuggling, and His Majesty's Government are of opinion that exception cannot be taken to their application to American vessels as an unreasonable interference with the American fishery, and they entertain the strong hope that the United States' Government will, on reconsideration, perceive the correctness of this view, and issue instructions accordingly for the future guidance of those in charge of American vessels.

It is, moreover, to the advantage of the American vessels engaged in the winter fishery in the Bay of Islands that they should report at a Colonial custom-house. Owing to the extent and peculiar configuration of that bay, and owing to the prevalence of fogs, vessels that enter its inner waters may remain for days without the local officers becoming aware that they are on the coast unless they so report. In such circumstances it is difficult for the Colonial Government to insure to American fishermen that protection against lawless interference for which Mr. Root calls in the concluding part of his note.

His Majesty's Government desire further to invite the attention of the United States' Government to the fact that certain United States' vessels engaged in the fishery refused to pay light dues. This is the first time, His Majesty's Government are informed, that American vessels have refused to pay these dues, and it is presumed that the refusal is based on the denial by the Colonial Government of the trading privileges allowed in past years. His Majesty's Government, however, cannot admit that such denial entitles American vessels to exemption from light dues in the ports in which they fish. As already stated, American fishing-vessels engaged in the fishery under the Convention of 1818 have no Treaty status as such, and the only ground on which, in the opinion of His Majesty's Government, the application of any Colonial law to such vessels can be objected to is that such application involves an unreasonable interference with the exercise of the Treaty rights of the American fishermen on board. The payment of light dues by a vessel on entering a port of the Colony clearly involves no such interference. These dues are payable by all vessels of whatever description and nationality other than coasting- and fishing-vessels owned and registered in the Colony (which are, on

certain conditions, exempt either wholly or in part). His Majesty's Government trust that in these circumstances such directions will be issued as will prevent further refusals in the future, and they would point out generally that it is the duty of all foreigners sojourning in the limits of the British jurisdiction to obey that law, and that, if it is considered that the local jurisdiction is being exercised in a manner not consistent with the enjoyment of any Treaty rights, the proper course to pursue is not to ignore the law, but to obey it, and to refer the question of any alleged infringement of their Treaty rights to be settled diplomatically between their Government and that of His Majesty.

Propositions 4, 5, and 6 state:—

Proposition 4. "The proper evidence that a vessel is an American vessel, and entitled to exercise the Treaty right, is the production of the ship's papers of the kind generally recognized in the maritime world as evidence of a vessel's national character."

Proposition 5. "When a vessel has produced papers showing that she is an American vessel, the officials of Newfoundland have no concern with the character or extent of the privileges accorded to such a vessel by the Government of the United States. No question as between a registry and licence is a proper subject for their consideration. They are not charged with enforcing any Laws or Regulations of the United States. As to them, if the vessel is American she has the Treaty right, and they are not at liberty to deny it."

Proposition 6. "If any such matter were a proper subject for the consideration of the officials of Newfoundland, the statement of this Department that vessels bearing an American registry are entitled to exercise the Treaty right should be taken by such officials as conclusive."

His Majesty's Government are unable to agree to these propositions, except with the reservations as to the status of American vessels under the Convention already indicated, and with reference to proposition 6, they would submit that the assurance to be given by the Department of State of the United States should be that the persons by whom the fishery is to be exercised from the American vessels are inhabitants of the United States.

In point of fact the Colonial Government have informed His Majesty's Government that they do not require an American vessel to produce a United States' fishing licence. The distinction between United States' registration and the possession of a United States' fishing licence is, however, of some importance, inasmuch as a vessel which, so far as the United States' Government are concerned, is at liberty both to trade and to fish naturally calls for a greater measure of supervision by the Colonial Government than a vessel fitted out only for fishing and debarred by the United States' Government from trading; and information has been furnished to His Majesty's Government by the Colonial Government which shows that the proceedings of American fishing-vessels in Newfoundland waters have in the past been of such a character as to make it impossible, from the point of view of the protection of the Colonial revenue, to exempt such vessels from the supervision authorized by the Colonial Customs Law.

His Majesty's Government now turn to that part of Mr. Root's note which deals with "The Foreign Fishing-Vessels Act, 1905."



His Majesty's Government would have viewed with the strongest disapproval any disposition on the part of the Colonial authorities to administer this Act in a manner not consistent with His Majesty's Treaty obligations, but they are confident that the United States' Government will readily admit that the fears expressed on this head in Mr. Root's note have not been realized.

They desire, however, to point out that, though the Act in question was passed to give effect to the decision of the Colonial Government to withdraw from American fishing-vessels the privileges which they had been allowed to enjoy for many years previously of purchasing bait and supplies and of engaging crews in the ports of the Colony, the provisions objectionable to the United States' Government which it embodies are in no sense new. They will be found in "The Foreign Fishing-Vessels Act, 1893." The present Act differs from the earlier Act in that it takes away, by omission, from the Colonial Government the power conferred upon them by the earlier Act of authorizing the issue of licences to foreign fishing-vessels for the enjoyment of the privileges mentioned. Allowing for this change, the provisions of the two Acts are in all essential respects identical. The provisions as to boarding, bringing into port, and searching appear in both Acts, and also the provisions as to the possession of bait, outfits, and supplies being *primâ facie* evidence of the purchase of the same in the Colonial jurisdiction, except that in the earlier Act there was a further provision, consequential on the authority which it conferred on the Colonial Government to issue licences, directing that the failure or refusal to produce a licence should be *primâ facie* evidence of the purchase of such articles without a licence. The position of any American fishing-vessel choosing to fish for herself on the Treaty Coast has consequently been since 1893 the same as it is to-day. His Majesty's Government do not advance these considerations with the object of suggesting that the objections which the United States' Government have taken to sections 1 and 3 of the Foreign Fishing-Vessels Act are impaired by the fact that these provisions have been on the Statute Book of the Colony since 1893 without protest, and they are ready to assume that no such protest has been lodged merely because the privileges accorded to American vessels in the ports of the Colony up to the present have been such as to render it unnecessary for inhabitants of the United States to avail themselves of their right of fishing under the Convention of 1818. The object of His Majesty's Government is simply to remove any impression which may have formed itself in the mind of the United States' Government that the language of the Act of 1905 was selected with any special view of prejudicing the exercise of the American Treaty right of fishery, and to point out that, on the contrary, it dates back to 1893, that is, to a time when it was the policy of the Colonial Government to treat American vessels on a favoured footing.

A new Act was not necessary to give effect to the present policy of the Colonial Government. Effect to it could have been given under the Act of 1893 by the mere suspension of the issue of licences to American vessels, and the only object of the new Act, as His Majesty's Government understand the position, was to secure the express and formal approval of the Colonial Legislature for the carrying out of the policy of the Colonial Government.

Having offered these general remarks, His Majesty's Government desire to point out that, in discussing the general effects of "The Foreign Fishing-Vessels Act, 1905," on the American fishery under the Convention of 1818, the United States' Government confine themselves to sections 1 and 3 and make no reference to section 7, which preserves "the rights and privileges granted by Treaty to the subjects of any State in amity with His Majesty." In view of this provision, His Majesty's Government are unable to agree with the United States' Government in regarding the provisions of sections 1 and 3 as "constituting a warrant to the officers named to interfere with and violate" American rights under the Convention of 1818. On the contrary, they consider section 7 as, in effect, a prohibition of any vexatious interference with the exercise of the Treaty rights whether of American or of French fishermen. As regards section 3, they admit that the possession by inhabitants of the United States of any fish and gear which they may lawfully take or use in the exercise of their rights under the Convention of 1818 cannot properly be made *primâ facie* evidence of the commission of an offence, and, bearing in mind the provisions of section 7, they cannot believe that a Court of Law would take a different view.

They do not, however, contend that the Act is as clear and explicit as, in the circumstances, it is desirable that it should be, and they propose to confer with the Government of Newfoundland with the object of removing any doubts which the Act in its present form may suggest as to the power of His Majesty to fulfil his obligations under the Convention of 1818.

On the concluding part of Mr. Root's note it is happily not necessary for His Majesty's Government to offer any remarks, since the fishing season has come to an end without any attempt on the part of British fishermen to interfere with the peaceful exercise of the American Treaty right of fishery.

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*Mr. Root to Mr. Whitelaw Reid.*

DEPARTMENT OF STATE, WASHINGTON, *June 30, 1906.*

SIR: The memorandum inclosed in the note from Sir Edward Grey to you of the 2nd February, 1906, and transmitted by you on the 6th February, has received careful consideration.

The letter which I had the honour to address to the British Ambassador in Washington on the 19th October last stated with greater detail the complaint in my letter to him of the 12th October, 1905, to the effect that the local officers of Newfoundland had attempted to treat American ships as such, without reference to the rights of their American owners and officers, refusing to allow such ships sailing under register to take part in the fishing on the Treaty coast, although owned and commanded by Americans, and limiting the exercise of the right to fish to ships having a fishing licence.

In my communications the Government of the United States objected to this treatment of ships as such—that is, as trading-vessels or fishing-vessels, and laid down a series of propositions regarding the treatment due to American vessels on the Treaty coast, based on the view that such treatment should depend, not upon the character of



the ship as a registered or licensed vessel, but upon its being American; that is, owned and officered by Americans, and, therefore, entitled to exercise the rights assured by the Treaty of 1818 to the inhabitants of the United States.

It is a cause of gratification to the Government of the United States that the prohibitions interposed by the local officials of Newfoundland were promptly withdrawn upon the communication of the facts to His Majesty's Government, and that the Memorandum now under consideration emphatically condemns the view upon which the action of the local officers was based, even to the extent of refusing assent to the ordinary forms of expression which ascribe to ships the rights and liabilities of owners and masters in respect of them.

It is true that the Memorandum itself uses the same form of expression when asserting that American ships have committed breaches of the Colonial Customs Law, and ascribing to them duties, obligations, omissions, and purposes which the Memorandum describes. Yet we may agree that ships, strictly speaking, can have no rights or duties, and that whenever the Memorandum, or the letter upon which it comments, speaks of a ship's rights and duties, it but uses a convenient and customary form of describing the owner's or master's right and duties in respect of the ship. As this is conceded to be essentially "a ship fishing," and as neither in 1818 nor since could there be an American ship not owned and officered by Americans, it is probably quite unimportant which form of expression is used.

I find in the Memorandum no substantial dissent from the first proposition of my note to Sir Mortimer Durand of the 19th October, 1905, that any American vessel is entitled to go into waters of the Treaty coast and take fish of any kind, and that she derives this right from the Treaty and not from any authority proceeding from the Government of Newfoundland.

Nor do I find any substantial dissent from the fourth, fifth, and sixth propositions, which relate to the method of establishing the nationality of the vessel entering the Treaty waters for the purpose of fishing, unless it be intended, by the comments on those propositions, to assert that the British Government is entitled to claim that, when an American goes with his vessel upon the Treaty coast for the purpose of fishing, or with his vessel enters the bays or harbours of the coast for the purpose of shelter and of repairing damages therein, or of purchasing wood, or of obtaining water, he is bound to furnish evidence that all the members of his crew are inhabitants of the United States. We cannot for a moment admit the existence of any such limitation upon our Treaty rights. The liberty assured to us by the Treaty plainly includes the right to use all the means customary or appropriate for fishing upon the sea, not only ships and nets and boats, but crews to handle the ships and the nets and the boats. No right to control or limit the means which Americans shall use in fishing can be admitted unless it is provided in the terms of the Treaty, and no right to question the nationality of the crews employed is contained in the terms of the Treaty. In 1818, and ever since, it has been customary for the owners and masters of fishing-vessels to employ crews of various nationalities. During all that period I am not able to discover that any suggestion has ever been made of a right to scrutinize the nationality of the crews employed in the vessels through which the Treaty right has been exercised.

The language of the Treaty of 1818 was taken from the IIIrd Article of the Treaty of 1783. The Treaty made at the same time between Great Britain and France, the previous Treaty of the 10th February, 1763, between Great Britain and France, and the Treaty of Utrecht of the 11th April, 1713, in like manner contained a general grant to "the subjects of France" to take fish on the Treaty coast. During all that period no suggestion, so far as I can learn, was ever made that Great Britain had a right to inquire into the nationality of the members of the crew employed upon a French vessel.

Nearly two hundred years have passed during which the subjects of the French King and the inhabitants of the United States have exercised fishing rights under these grants made to them in these general terms, and during all that time there has been an almost continuous discussion in which Great Britain and her Colonies have endeavoured to restrict the right to the narrowest possible limits, without a suggestion that the crews of vessels enjoying the right, or whose owners were enjoying the right, might not be employed in the customary way without regard to nationality. I cannot suppose that it is now intended to raise such a question.

I observe with satisfaction that the Memorandum assents to that part of my second proposition to the effect that "an American vessel seeking to exercise the Treaty right is not bound to obtain a licence from the Government of Newfoundland," and that His Majesty's Government agree that "no law of Newfoundland should be enforced on American fishermen which is inconsistent with their rights under the Convention."

The views of His Majesty's Government, however, as to what laws of the Colony of Newfoundland would be inconsistent with the Convention if applied to American fishermen, differ radically from the view entertained by the Government of the United States. According to the Memorandum, the inhabitants of the United States going in their vessels upon the Treaty coast to exercise the Treaty right of fishing are bound to enter and clear in the Newfoundland custom-houses, to pay light dues, even the dues from which coasting and fishing-vessels owned and registered in the Colony are exempt, to refrain altogether from fishing except at the time and in the manner prescribed by the Regulations of Newfoundland. The Colonial prohibition of fishing on Sundays is mentioned by the Memorandum as one of the Regulations binding upon the American fishermen. We are told that His Majesty's Government "hold that the only ground on which the application of any provisions of Colonial law to American vessels engaged in the fishery can be objected to is that it unreasonably interferes with the American right of fishery."

The Government of the United States fails to find in the Treaty any grant of right to the makers of Colonial law to interfere at all, whether reasonably or unreasonably, with the exercise of the American rights of fishery, or any right to determine what would be a reasonable interference with the exercise of that American right if there could be any interference. The argument upon which the Memorandum claims that the Colonial Government is entitled to interfere with and limit the exercise of the American right of fishery, in accordance with its own ideas of what is reasonable, is based first, upon the fact that, under the terms of the Treaty the right of the inhabitants of the United States to fish upon the Treaty coast is



possessed by them "in common with the subjects of His Britannic Majesty;" and, second, upon the proposition that "the inhabitants of the United States would not now be entitled to fish in British North American waters but for the fact that they were entitled to do so when they were British subjects," and that "American fishermen cannot therefore rightfully claim any other right to exercise the right of fishery under the Treaty of 1818 than if they had never ceased to be British subjects."

Upon neither of these grounds can the inferences of the Memorandum be sustained. The qualification that the liberty assured to American fishermen by the Treaty of 1818 they were to have "in common with the subjects of Great Britain" merely negatives an exclusive right. Under the Treaties of Utrecht, of 1763 and 1783, between Great Britain and France, the French had constantly maintained that they enjoyed an exclusive right of fishery on that portion of the coast of Newfoundland between Cape St. John and Cape Raye, passing around by the north of the island. The British, on the other hand, had maintained that British subjects had a right to fish along with the French, so long as they did not interrupt them.

The dissension arising from these conflicting views had been serious and annoying, and the provision that the liberty of the inhabitants of the United States to take fish should be in common with the liberty of the subjects of His Britannic Majesty to take fish was precisely appropriate to exclude the French construction and leave no doubt that the British construction of such a general grant should apply under the new Treaty. The words used have no greater or other effect. The provision is that the *liberty* to take fish shall be held in common, not that the *exercise* of that liberty by one people shall be the limit of the exercise of that liberty by the other. It is a matter of no concern to the American fishermen whether the people of Newfoundland choose to exercise their right or not, or to what extent they choose to exercise it. The statutes of Great Britain and its Colonies limiting the exercise of the British right are mere voluntary and temporary self-denying ordinances. They may be repealed to-morrow. Whether they are repealed, or whether they stand, the British right remains the same, and the American right remains the same. Neither right can be increased nor diminished by the determination of the other nation that it will or will not exercise its right, or that it will exercise its right under any particular limitations of time or manner.

The proposition that "the inhabitants of the United States would not now be entitled to fish in British North American waters but for the fact that they were entitled to do so when they were British subjects," may be accepted as a correct statement of one of the series of facts which led to the making of the Treaty of 1818. Were it not for that fact there would have been no fisheries Article in the Treaty of 1783, no controversy between Great Britain and the United States as to whether that Article was terminated by the war of 1812, and no settlement of that controversy by the Treaty of 1818. The Memorandum, however, expressly excludes the supposition that the British Government now intends to concede that the present rights of American fishermen upon the Treaty coast are a continuance of the right possessed by the inhabitants of the American Colonies as British subjects, and declares that this present American right is a

new grant by the Treaty of 1818. How then can it be maintained that the limitations upon the former right continued although the right did not, and are to be regarded as imposed upon the new grant, although not expressed in the instrument making the grant? On the contrary, the failure to express in the terms of the new Treaty the former limitations, if any there had been, must be deemed to evidence an intent not to attach them to the newly created right.

Nor would the acceptance by Great Britain of the American view that the Treaty of 1783 was in the nature of a partition of Empire, that the fishing rights formerly enjoyed by the people of the Colonies and described in the instrument of partition continued notwithstanding the war of 1812, and were in part declared and in part abandoned by the Treaty of 1818, lead to any different conclusion. It may be that under this view the rights thus allotted to the Colonies in 1783 were subject to such Regulations as Great Britain had already imposed upon their exercise before the partition, but the partition itself and the recognition of the independence of the Colonies in the Treaty of partition was a plain abandonment by Great Britain of the authority to further regulate the rights of the citizens of the new and independent nation.

The Memorandum says: "The American fishermen cannot rightly claim to exercise their right of fishery under the Convention of 1818 on a footing different than if they had never ceased to be British subjects." What then was the meaning of independence? What was it that continued the power of the British Crown over this particular right of Americans formerly exercised by them as British subjects, although the power of the British Crown over all other rights formerly exercised by them as British subjects was ended? No answer to this question is suggested by the Memorandum.

In previous correspondence regarding the construction of the Treaty of 1818, the Government of Great Britain has asserted, and the Memorandum under consideration perhaps implies, a claim of right to regulate the action of American fishermen in the Treaty waters, upon the ground that those waters are within the territorial jurisdiction of the Colony of Newfoundland. This Government is constrained to repeat emphatically its dissent from any such view. The Treaty of 1818 either declared or granted a perpetual right to the inhabitants of the United States which is beyond the sovereign power of England to destroy or change. It is conceded that this right is, and for ever must be, superior to any inconsistent exercise of sovereignty within that territory. The existence of this right is a qualification of British sovereignty within that territory. The limits of the right are not to be tested by referring to the general jurisdictional powers of Great Britain in that territory, but the limits of those powers are to be tested by reference to the right as defined in the instrument created or declaring it. The Earl of Derby in a letter to the Governor of Newfoundland, dated the 12th June, 1884, said: "The peculiar fisheries rights granted by Treaties to the French in Newfoundland invest those waters during the months of the year when fishing is carried on in them, both by English and French fishermen, with a character somewhat analogous to that of a common sea for the purpose of fishery." And the same observation is applicable to the situation created by the existence of American fishing rights under the Treaty of 1818. An appeal to the general jurisdiction of



Great Britain over the territory is, therefore, a complete begging of the question, which always must be, not whether the jurisdiction of the Colony authorizes a law limiting the exercise of the Treaty right, but whether the terms of the grant authorize it.

The distinguished writer just quoted observes in the same letter:—

“The Government of France each year during the fishing season employs ships of war to superintend the fishery exercised by their countrymen, and, in consequence of the divergent views entertained by the two Governments respectively as to the interpretation to be placed upon the Treaties, questions of jurisdiction which might at any moment have become serious have repeatedly arisen.”

The practice thus described, and which continued certainly until as late as the modification of the French fishing rights in the year 1904, might well have been followed by the United States, and probably would have been, were it not that the desire to avoid such questions of jurisdiction as were frequently arising between the French and the English has made this Government unwilling to have recourse to such a practice so long as the rights of its fishermen can be protected in any other way.

The Government of the United States regrets to find that His Majesty's Government has now taken a much more extreme position than that taken in the last active correspondence upon the same question arising under the provisions of the Treaty of Washington. In his letter of the 3rd April, 1880, to the American Minister in London, Lord Salisbury said:—

“In my note to Mr. Welsh of the 7th November, 1878, I stated ‘that British sovereignty as regards these waters, is limited in scope by the engagements of the Treaty of Washington, which *cannot* be modified or affected by any municipal legislation,’ and Her Majesty's Government fully admit that United States' fishermen have the right of participation on the Newfoundland *inshore fisheries, in common* with British subjects, as specified in Article XVIII of that Treaty. But it cannot be claimed, consistently with this right of participation in common with the British fishermen, that the United States' fishermen have any *other*, and still less that they have any *greater*, rights than the British fishermen had at the date of the Treaty.

“If, then, at the *date* of the signature of the Treaty of Washington certain restraints were, by the municipal law, imposed upon the *British fishermen*, the United States' fishermen were, by the *express terms* of the Treaty, equally subjected to those restraints, and the obligation to observe *in common* with the British the then existing local laws and regulations, which is implied by the words ‘in common,’ attached to the United States' citizens *as soon as* they claimed the benefit of the Treaty.”

Under the view thus forcibly expressed, the British Government would be consistent in claiming that all regulations and limitations upon the exercise of the right of fishing upon the Newfoundland coast, which were in existence at the time when the Treaty of 1818 was made, are now binding upon American fishermen.

Farther than this, His Majesty's Government cannot consistently go, and, farther than this, the Government of the United States cannot go.

For the claim now asserted that the Colony of Newfoundland is entitled at will to regulate the exercise of the American Treaty right

is equivalent to a claim of power to completely destroy that right. This Government is far from desiring that the Newfoundland fisheries shall go unregulated. It is willing and ready now, as it has always been, to join with the Government of Great Britain in agreeing upon all reasonable and suitable regulations for the due control of the fishermen of both countries in the exercise of their rights, but this Government cannot permit the exercise of these rights to be subject to the will of the Colony of Newfoundland. The Government of the United States cannot recognize the authority of Great Britain or of its Colony to determine whether American citizens shall fish on Sunday. The Government of Newfoundland cannot be permitted to make entry and clearance at a Newfoundland custom-house and the payment of a tax for the support of Newfoundland lighthouses conditions to the exercise of the American right of fishing. If it be shown that these things are reasonable the Government of the United States will agree to them, but it cannot submit to have them imposed upon it without its consent. This position is not a matter of theory. It is of vital and present importance, for the plain object of recent legislation of the Colony of Newfoundland has been practically to destroy the value of American rights under the Treaty of 1818. Those rights are exercised in competition with the fishermen and merchants of Newfoundland. The situation of the Newfoundland fishermen residing upon the shore and making the shore their base of operations, and of the American fishermen coming long distances with expensive outfits, devoting long periods to the voyage to the fishing grounds and back to the market, obliged to fish rapidly in order to make up for that loss of time, and making ships their base of operations, are so different that it is easy to frame regulations which will offer slight inconvenience to the dwellers on shore and be practically prohibitory to the fishermen from the coasts of Maine and Massachusetts; and, if the grant of this competitive right is to be subject to such laws as our competitors choose to make, it is a worthless right. The Premier of Newfoundland in his speech in the Newfoundland Parliament, delivered on the 12th April, 1905, in support of the Foreign Fishing Bill, made the following declaration:—

“This Bill is framed specially to prevent the American fishermen from coming into the bays, harbours, and creeks of the coast of Newfoundland for the purpose of obtaining herring, caplin, and squid for fishing purposes.”

And this further declaration:—

“This communication is important evidence as to the value of the position we occupy as mistress of the northern seas so far as the fisheries are concerned. Herein was evidence that it is within the power of the Legislature of this Colony to make or mar our competitors to the North Atlantic fisheries. Here was evidence that by refusing or restricting the necessary bait supply, we can bring our foreign competitors to realize their dependency upon us. One of the objects of this legislation is to bring the fishing interests of Gloucester and New England to a realization of their dependence upon the bait supplies of this Colony. No measure could have been devised having more clearly for its object the conserving, safeguarding, and protecting of the interests of those concerned in the fisheries of the Colony.”

It will be observed that there is here the very frankest possible disavowal of any intention to so regulate the fisheries as to be fair to the



American fishermen. The purpose is, under cover of the exercise of the power of regulation, to exclude the American fishermen. The Government of the United States surely cannot be expected to see with complacency the rights of its citizens subjected to this kind of regulation.

The Government of the United States finds assurance of the desire of His Majesty's Government to give reasonable and friendly treatment to American fishing rights on the Newfoundland coast in the statement of the Memorandum that the Newfoundland Foreign Fishing-Vessels Act is not as clear and explicit as, in the circumstances, it is desirable that it should be, and in the expressed purpose of His Majesty's Government to confer with the Government of Newfoundland with the object of removing any doubts which the Act, in its present form, may suggest as to the power of His Majesty to fulfil his obligation under the Convention of 1818. It is hoped that, upon this Conference, His Majesty's Government will have come to the conclusion, not merely that the seventh section of the Act, which seeks to preserve "the rights and privileges granted by Treaty to the subjects of any State in amity with His Majesty," amounts to a prohibition of any "vexatious interference" with the exercise of the Treaty rights of American fishermen, but that this clause ought to receive the effect of entirely excluding American vessels from the operation of the first and third clauses of the Act relating to searches and seizures and *primâ facie* evidence. Such a construction by His Majesty's Government would wholly meet the difficulty pointed out in my letter of the 19th October, as arising under the first and third sections of the Act. A mere limitation, however, to interference which is not "vexatious," leaving the question as to what is "vexatious interference" to be determined by the local officers of Newfoundland, would be very far from meeting the difficulty.

You will inform His Majesty's Government of these views, and ask for such action as shall prevent any interference upon any ground by the officers of the Newfoundland Government with American fishermen when they go to exercise their Treaty rights upon the Newfoundland coast during the approaching fishing season.

I am, &c.

(Signed)

ELIHU ROOT.

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Mr. Whitelaw Reid to Sir Edward Grey.

AMERICAN EMBASSY,  
London, July 20, 1906. (Received July 23.)

SIR: The Memorandum sent me on the 2nd February, 1906, embodying the views of His Majesty's Government on the propositions formulated by the Secretary of State of the United States as to the rights of American fishing-vessels on the Newfoundland coast, in his letter to Sir Mortimer Durand of the 19th October, 1905, has had Mr. Root's careful consideration.

He has now addressed me a letter, under date of the 30th June, 1906, giving the reasons which prevent his agreement with several of the views stated in this Memorandum. I am instructed, while communicating to you these reasons, to ask for such action as shall pre-

vent any interference upon any ground by the officers of the Newfoundland Government with American fishermen, when they go to exercise their Treaty rights upon the Newfoundland coast during the approaching fishing season.

I beg to inclose herewith a copy of this letter from the Secretary of State of the United States.

I have, &c.,

(Signed) WHITELAW REID.

*Lord Elgin to Governor MacGregor.*

DOWNING STREET, August 6, 1906.

SIR: I have the honour to forward, to be laid before your Ministers, copy of a note from the United States' Ambassador at this Court, inclosing copy of a letter from Mr. Root which sets out the views of the United States' Government as to the conditions on which the rights of American fishermen under the Convention of 1818 are to be exercised.

2. Copies of the Memorandum of his Majesty's Government which Mr. Root's letter discusses were forwarded to you on the 15th February last.

3. Mr. Root's letter is engaging the careful attention of His Majesty's Government. I will communicate with you again as soon as I am in a position to state the decision to which they have come in the matter.

I have, &c.

(Signed) ELGIN.

*Lord Elgin to Governor MacGregor.*

[Telegraphic.]

DOWNING STREET, August 8, 1906.

Copies went to you by last mail of communication from United States' Government in which they contend that Convention of 1818 justifies no interference, reasonable or unreasonable, with exercise of American rights of fishery, and request His Majesty's Government to prevent any interference upon any ground by officers of Newfoundland Government with American fishermen when they go to exercise their Treaty rights upon the coast of Newfoundland during approaching fishing season. They disclaim desire that Newfoundland fisheries shall go unregulated, and express their readiness to join with His Majesty's Government in agreeing upon all reasonable and suitable regulations for due control of fishermen of both countries in exercise of their rights, but state that they cannot permit exercise of these rights to be subject to will of Newfoundland. Pending such an agreement, the furthest they are prepared to go is to accept such limitations as were in existence at time Convention of 1818 was concluded, and in support of this position appeal to Lord Salisbury's note to United States' Minister of the 3rd April, 1880, in connection



with disturbances at Fortune Bay. Light dues were presumably not levied in 1818, seines were apparently in use, the prohibition of Sunday fishing had been abolished in 1776 (see 15 George III, cap. 31), and fishing-ships were exempted from entry at Custom-house, and required only to make a report on first arrival and on clearing (see same Act). United States' vessels could, on the basis of the *status quo* in 1818, only be asked to make report at custom-house on arrival and on clearing.

It is clear that with such a wide divergence of view between the two Governments no immediate settlement of questions involved is possible, and His Majesty's Government are of opinion that any attempt on part of your Government to apply to American fishermen the Regulations to which exception is taken by the United States' Government while the discussion of the questions is proceeding between the two Governments might give rise to a highly undesirable and even dangerous situation, and that it is therefore essential that some Provisional Arrangement should be made to secure the peaceable conduct of the coming fishery. His Majesty's Government are therefore informing United States' Government that they are prepared, pending the further discussion of questions at issue and without prejudice to such discussion, to negotiate a Provisional Arrangement which will enable the ensuing fishery to be carried on in good order and friendship, and that they will shortly submit proposals with that object. Please report whether your Ministers have any suggestions to offer as to the nature of that Arrangement. It seems to be certain that if your Ministers press for prohibition both of seines and of Sunday fishing some concessions other than exemption from light dues and Customs law will be expected. Can any such concessions be offered? If not, there is little prospect that both points will be conceded by United States, and as greater possibility of disorder is understood to be attached to Sunday fishing, it would seem better to try and obtain assent of United States to prohibition of this practice in return for use of seines. Have your Ministers any observations as to any fair and reasonable limitations or conditions to be imposed on use of seines if this course is adopted? Telegraph reply immediately.

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*Sir Edward Grey to Mr. Reid.*

FOREIGN OFFICE, August 14, 1906.

YOUR EXCELLENCY: The note which you were so good as to address to me on the 20th ultimo, forwarding a letter from Mr. Secretary Root respecting the rights of American fishing-vessels on the Newfoundland coast, is receiving the careful consideration of His Majesty's Government, and they have observed with much regret that the wide divergence of views between the two Governments which is disclosed by the correspondence makes it hopeless to expect an immediate settlement of the various questions at issue.

Pending the further discussion of these questions, however, and without prejudice to it, His Majesty's Government are prepared, in accordance with the suggestion made in Mr. Root's letter, to confer with the United States' Government, with a view to some arrangement which will secure the peaceable and orderly conduct of the

forthcoming fishery, and they hope very shortly to be able to submit proposals with this object. I may add that such an arrangement would be merely in the nature of a *modus vivendi*, applicable only to the ensuing season, and would not in any way affect any of the rights and claims of either party.

I have, &c.

(Signed)

EDWARD GREY.

*Mr. Reid to Sir Edward Grey.*

AMERICAN EMBASSY, LONDON,  
August 16, 1906. (Received August 18.)

SIR: I have the honour to acknowledge your letter of the 14th instant regretting that, owing to the wide divergence from your views disclosed in Mr. Root's letter respecting the rights of American vessels on the Newfoundland coast, it is hopeless to expect an immediate settlement.

I am glad to note that under these circumstances you expect soon to submit proposals for a *modus vivendi* for the ensuing season, and shall hasten to advise my Government of this purpose.

I have, &c.

(Signed)

WHITELAW REID.

*Lord Elgin to Governor MacGregor.*

[Telegraphic.]

DOWNING STREET, September 3, 1906.

His Majesty's Government have received with much disappointment your telegram of the 19th August. They cannot but feel that your Ministers have failed to appreciate serious difficulty in which their policy has placed both them and His Majesty's Government. I will return a full reply to your Ministers' statement by mail in due course. In the meantime, please remind them of Lord Kimberley's speech in the House of Lords in 1891, in which, when discussing the course taken by Lord Salisbury's Government, he said, "While the negotiations are proceeding with France, it is plainly necessary that there should be a truce until the respective rights are specifically ascertained. The *modus vivendi* does not in any way infringe the assurance given by Mr. Labouchere to the Colony, for the *modus vivendi* is not for the purpose of making new Treaty arrangements, but for the purpose of ascertaining what the existing Treaty engagements are."

His Majesty's Government have decided to act on the principles indicated in those remarks, which not only had been adopted by the then British Government, but also represented the consensus of opinion of both political parties at the time, and are accordingly proposing to United States' Government *modus vivendi* under which, on the one part, Foreign Fishing Vessels Act, 1906, will remain in abeyance, first part of section 1 of Act of 1905 and whole of section 3 will be held not to apply to United States' fishing-vessels, and light



dues will be waived; and, on the other, United States' vessels will report at custom-house on entry and on clearance, and United States' fishermen will comply with colonial fishery regulations.

As regards call at custom-house, your Ministers are of course aware that the negotiations which led up to the Convention of 1818 virtually bind His Majesty not to exact customs duties in respect of goods on board United States' vessels necessary for prosecution of fishery, and support of fishermen during fishery, and during voyages to and from fishing grounds.

His Majesty's Government hope that United States' Government will accept proposal outlined above, but wish to warn your Ministers that some further concessions may be necessary if a *modus vivendi* is to be arranged. In that event they trust that your Ministers will assist the efforts of His Majesty's Government to reach some settlement which will obviate the grave difficulties and dangers to be apprehended in the course of the ensuing fishery.

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*Lord Elgin to Governor MacGregor.*

[Telegraphic.]

DOWNING STREET, September 3, 1906.

Referring to my telegram of even date, please state whether your Ministers, in the event of the negotiations for a *modus vivendi* breaking down, are prepared to indemnify His Majesty's Government against any claims for compensation which may be preferred by United States' Government, and which it may not be possible consistently with a fair interpretation of Treaty rights to refuse; also whether, in the event of a reference to arbitration becoming in the opinion of His Majesty's Government necessary or desirable, your Ministers will agree to such reference, and undertake to meet expenses of arbitration and pay the award, if any.

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*Sir Edward Grey to Mr. Reid.*

FOREIGN OFFICE, September 3, 1906.

YOUR EXCELLENCY: In my note of the 14th August I stated that His Majesty's Government hoped shortly to be able to submit to the Government of the United States proposals for a provisional Arrangement, which would secure the peaceable and orderly conduct of the forthcoming herring fishery on the coast of Newfoundland. I have now the honour, on the understanding mentioned in my note, viz., that the Arrangement would be in the nature of a *modus vivendi* to be applicable only to the ensuing season, and not in any way to affect the rights and claims of either party to the Convention of 1818, to submit the following proposals, viz.:—

(1.) His Majesty's Government will not bring into force "The Newfoundland Foreign Fishing Vessels Act, 1906," which imposes on United States' fishing-vessels certain restrictions in addition to those imposed by the Act of 1905.

(2.) The provisions of the first part of section 1 of the Act of 1905 as to boarding and bringing into port, and the whole of section 3 of the same Act will not be regarded as applying to the United States' fishing-vessels.

(3.) The United States' Government will in return direct their fishermen to comply with the Colonial Fishery Regulations, as was in fact done last year, with the exception of certain breaches of the prohibition of Sunday fishing.

(4.) The demand for payment of light dues will be waived by His Majesty's Government.

(5.) The United States' Government will direct the masters of United States' fishing-vessels to comply with the provisions of the Colonial Customs Law as to reporting at a customs-house, on arrival in and departure from colonial waters.

2. As regards head (3) of this Arrangement, I would point out that of the three restrictions which the Colonial Fishery Regulations impose on the herring fishery in the waters open to United States' fishermen, the first, viz., the prohibition of "purse" seines, is in force in all the waters of the Colony. It is also in force in all the waters of Canada. The second, the prohibition of herring traps, is also in force in Placentia, St. Mary's and Fortunes Bays, and in the district of Twillingate. The third, the prohibition of "herring" seines, is in force also subject to some reservations as to baiting purposes in the inner waters of Placentia Bay, and in certain waters on the north-east coast. The application of these three restrictions to the herring bays of the west coast is, of course, prior to and not in any way connected with the present policy of the Colonial Government, and His Majesty's Government have the testimony of the naval officers who have been employed on the Treaty Coast as to the destructive results of the use of seines. His Majesty's Government therefore hope that the United States' Government will recognize that His Majesty's Government are, apart from any question of right, acting in the interests of the continuation of the common fishery in proposing as a part of the provisional Arrangement compliance with the three restrictions mentioned.

The fourth restriction, viz., the prohibition of Sunday fishing, is of general application throughout the Colony, and is also in force in Canada. Having regard to the duration of the fishing season and to other circumstances, His Majesty's Government do not feel that compliance with this prohibition involves any material inconvenience to United States' fishermen. On the other hand, in view of the strong feeling against Sunday fishing which prevails in the Colony, the disregard of it is fraught with possibilities of serious disorder. It is therefore hoped that the United States' Government will assist His Majesty's Government in the maintenance of peaceable relations between the two sets of fishermen by not countenancing any breach of the prohibition during the ensuing season.

3. As regards head (5), as explained in the Memorandum communicated to your Excellency on the 2nd February, a call at a customs-house, whether on entering or on leaving the waters of the Colony, need involve no interference with a vessel's fishing operations, and is in itself a requirement which may be reasonably made in the interests not only of the colonial revenue but of the United States' fishermen.



4. I trust that you will be able to inform me at an early date that the Arrangement outlined above is agreed to by your Government.

I have, &c.

(Signed)

EDWARD GREY.

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*Governor MacGregor to Lord Elgin.*

[Telegraphic.]

[Received September 8, 1906.]

Referring to your telegrams of the 3rd September, chief desire of my responsible advisers is to prevent our fishermen from selling fish to or working for Americans. They earnestly urge proclamation of Act No. 1 of 1906, and undertake to apply it only to our own people and to leave in abeyance questions of the lighthouse dues, customs entrance, nationality of American crews, purse seines, and undertake preservation of peace, and without your sanction to enter into no case against Americans. I am sending by next mail Minutes and despatch.

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*Governor MacGregor to Lord Elgin.*

[Telegraphic.]

[Received September 15, 1906.]

I am desired by my Ministers to state that they have learned with profound regret that His Majesty's Government has, without reference to this Colony, proposed to the United States' Ambassador, as one of the terms of a *modus vivendi*, the suspension of the Foreign Fishing-Vessels Act this year, which was only adopted after consultation with His Majesty's Government and mainly with a view to enable the Government of this Colony to deal with the local fisheries and thus secure during the coming autumn peaceable conduct of the fisheries.

They respectfully submit that any arrangement embracing the suspension of that Act interferes with the internal affairs of the Colony and is in violation of the pledge furnished by Lord Salisbury through the British Parliament of the 5th May, 1891, during the debate on Newfoundland Fisheries Bill, "that the Government of this Colony is given unlimited power with respect to its internal affairs." They had hoped and expected that before a *modus vivendi* was proposed to the United States' Government a full text of the same would have been submitted to this Government and thus have afforded an opportunity for suggestion or remonstrance. They also submit that the reasonableness of this expectation was warranted by the statement of Lord Salisbury in the debate on the Newfoundland Fisheries Bill of the 28th April, 1891. The suspension of the Act under reference renders them entirely powerless to carry out their fisheries policy and to secure that peaceable conduct of the fisheries during the coming season for which so much anxiety has been expressed by His Majesty's Government.

*Lord Elgin to Governor MacGregor.*

[Telegraphic.]

DOWNING STREET, *September 19, 1906.*

United States' Ambassador has presented Memorandum on subject of *modus vivendi*, of which following is substance: First, it expresses appreciation of readiness to waive Foreign Fishing-vessels Act, 1906, and points out that this and other restrictive legislation had compelled United States' fishermen to use purse-seines or abandon their rights; second, it acknowledges cordial disposition evinced by offer not to apply section 3 and first part of section 1 of Act of 1905; third, United States' fishermen will gladly pay light dues if not hindered in their right to fish, and are not unwilling to comply with regulation to report at custom-houses when possible, but it is remarked that it is sometimes physically impossible to break through ice for that purpose; fourth, as regards purse-seines and Sunday fishing, very grave difficulties present themselves, since if both these are taken away there might be, as things stand, no opportunity for profitable fishing under United States' Treaty rights. United States' Government are convinced that purse-seines are no more injurious to common fishery than gill nets; are not, in fact, so destructive, and do not tend to change migratory course of herring as gill nets do through death of large percentage of catch and consequent pollution of water. The small amount of purse-seining could not of course materially affect common fishery this season; besides, many United States' fishermen have already sailed with purse-seines as usual, and the others are already provided with them. This use of purse-seines was not free choice of United States' fishermen, they have been driven to it by local regulations, and continued use of it at this late date, this year seems vital. United States' Government will, however, renounce Sunday fishing for this season if His Majesty's Government will consent to use of purse-seines, and they cannot too strongly urge acceptance of this solution. (End of substance of Memorandum.)

His Majesty's Government propose to consent to use of purse-seines, subject of course to due regard being paid to other modes of fishery, and earnestly trust that your Ministers will see their way to agree to this course, and to pass regulation temporarily removing prohibition of use of purse-seines. If your Ministers fall in with this proposal, His Majesty's Government will be happy to endeavour to arrange with United States' Government that practice of engaging Newfoundland fishermen just outside 3-mile limit, which to some extent prevailed last year, should not be resorted to this year. Telegraph reply as soon as possible.

*Lord Elgin to Governor MacGregor.*

[Telegraphic.]

DOWNING STREET, *September 19, 1906.*

Referring to your telegram of the 15th September, I am sending full reply by mail. I would like, in the meantime, to observe, first, that Lord Salisbury's speech referred to drew clear distinction be-



tween internal affairs of Colony and matters of international interest, and insisted strongly on right of Imperial Government to intervene in matters coming within latter category; secondly, I have never admitted, and cannot admit, that "Foreign Fishing-Vessels Act, 1906," comes within former category; thirdly, like my predecessor, I have never approved policy embodied in Act of 1905, nor have I ever given any indication that I should be prepared to advise His Majesty in Council to bring into operation amended Act of 1906.

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*Lord Elgin to Governor MacGregor.*

DOWNING STREET, September 20, 1906.

SIR: I have the honour to acknowledge the receipt of your telegram of the 15th instant, in which your Ministers complain of the action of His Majesty's Government in the matter of the proposed fishery *modus vivendi* with the United States' Government.

2. Your Ministers submit that any arrangement involving the suspension of "The Foreign Fishing Vessels Act, 1906," is an interference with the internal affairs of the Colony, which violates the pledge given by the late Lord Salisbury in the House of Lords in 1891, to the effect that the Colony had been given unlimited power with respect to its internal affairs.

3. In the speech referred to Lord Salisbury drew a clear and precise distinction between the internal affairs of the Colony and matters of international and outside interest, and insisted strongly on the right of the Imperial Government to intervene in questions touching the relations of the Empire with foreign States. I am compelled therefore to infer that your Ministers regard the enforcement of the provisions of "The Foreign Fishing-Vessels Act, 1906," on United States' fishermen as a matter of purely local concern.

4. I am at a loss to discover the grounds on which they hold that view, and I regret that I am unable to record my assent to it. It will be within your recollection that when you informed me in February last of the intention of your Ministers to propose to the Colonial Legislature additional legislation to prevent British subjects resident in the Colony from fishing for American vessels, and suggested that such legislation would be regarded by His Majesty's Government as a matter of local concern, I replied that I held the contrary view and that His Majesty's Government, as responsible for the proper carrying out of the provisions of Article I of the Convention of 1818, were closely and directly interested in any legislation intended to define the conditions on which the rights of the inhabitants of the United States under that Article were to be exercised.

5. Your Ministers state that the Act of 1906 was passed after consultation with His Majesty's Government. This remark appears to me to require qualification. The only provisions of the Act with which His Majesty's Government have identified themselves are those which exempt vessels exercising Treaty rights of fishery from the application of section 3 and the first part of section 1 of the Act of 1905. It is true that all the other amendments of the Act of 1905 drawn up by your Ministers were submitted to His Majesty's Government, and that in order to remove certain obvious objections to

your Minister's proposals, His Majesty's Government suggested some alterations which were eventually embodied in the Act of 1906. But His Majesty's Government were careful at the same time to explain that their action in suggesting these alterations was not to be understood as in any way prejudicing the consideration of the Act when passed, or as in any way identifying His Majesty's Government with the policy of your Ministers, which they did not approve and which they did not believe to be in the interests even of the Colony itself.

6. The Act as passed provided that it should not be brought into operation until approved and confirmed by His Majesty in Council. In the circumstances which I have described it was at least uncertain whether His Majesty's Government would be prepared to take upon themselves the responsibility of bringing the Act into operation, and when the reply of the United States' Government to the British Memorandum was received and it became necessary, owing to the great divergence of view between the two Governments which it disclosed, to arrange a *modus vivendi*, it was clearly out of the question to complicate the situation, which it was the object of the *modus vivendi* to relieve, by imposing on United States' fishermen the additional restrictions contemplated by the Act.

7. It would be a source of great regret to me if in this or any other matter His Majesty's Government should fail either in respect for the constitutional rights of the Colony or in courtesy towards your Ministers. As to the right of His Majesty's Government to allow the Act to remain in suspense there can, I submit, be no doubt, and the decision to do so was communicated to you at the same time as to the United States' Ambassador.

8. I asked in my telegram of the 8th August whether your Ministers had any suggestions to make as to the nature of the proposed *modus vivendi*. By your telegram of the 19th August your Ministers informed me that they could not consent to any relaxation of the laws of the Colony in favour of United States' fishermen, and that they strongly deprecated any provisional arrangement with the United States' Government, and urged that the Act of 1906 should be brought into force at once. In your telegram of the 22nd August your Ministers again urged that the Act of 1906 should be brought into force, and again deprecated any provisional arrangement. The question of the payment of light dues, they added, might remain in abeyance, but they could not acquiesce in any evasion of the customs and fishery laws. His Majesty's Government were thus left to their own unaided devices to discover and arrange, in the very short time remaining before the commencement of the fishery, a basis for a *modus vivendi* with the United States' Government, but the proposals which they made to the United States' Government on the 3rd instant included no concessions which your Ministers were not prepared to make, apart from the suspension of the Act of 1906, and that, as I have already pointed out, was entirely within the discretion of His Majesty's Government. It was not until some days after these proposals had been submitted to the United States' Government that your Ministers evinced any readiness to consider a *modus vivendi*. They then informed me that provided the Act of 1906 was brought into force, they were prepared to give way on practically all the questions in dispute. This intimation unfortunately came too late,



and while I regret that the proposals made to the United States' Government do not commend themselves to your Ministers, I cannot but feel that in the circumstances no blame can fairly be imputed to His Majesty's Government.

I have, &c.

(Signed)

ELGIN.

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*Governor MacGregor to Lord Elgin.*

[Telegraphic.]

[Received September 21, 1906.]

My responsible advisers request me to transmit following message:—

"With reference to your telegram of the 19th instant. For the reasons that have been fully set forth in previous Minutes, Ministers regret they are unable to become consenting parties to *modus vivendi* with the United States' Government. They entirely dissent from the views expressed by United States' Government in respect to usage of purse seines and their effect upon the herring fishery, but as stated in despatch from his Excellency the Governor to the Secretary of State for Colonies of date 7th instant, in which Ministers fully concurred, if His Majesty's Government consent to their use by American fishermen, then, while fully recognizing the evils likely to result, this Government will be obliged, in justice to the people of this Colony, to pass a Regulation removing the prohibition of the usage of purse seines so that competition with Americans may be possible for local fishermen."

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*Sir Edward Grey to Sir M. Durand.*

FOREIGN OFFICE, September 26, 1906.

SIR: Your Excellency is already aware that I had communicated to the American Ambassador a Memorandum containing the views of His Majesty's Government on the proposed *modus vivendi* on the subject of the Newfoundland fisheries.

On receipt of this communication, of which a copy was inclosed in my despatch of the 14th September, Mr. Whitelaw Reid called yesterday and said he had every reason to hope that the terms therein proposed would be accepted by his Government. He was not, however, quite sure as to what was meant by interference of purse seines with other modes of fishing.

As to that part of the Memorandum dealing with the enlistment of Newfoundlanders outside the 3-mile limit, he expressed his personal conviction that his Government would do all that lay in their power to prevent the exasperation and irritation which is naturally caused by such proceedings just outside the limit; but he wished to throw out a suggestion, that the best way to avoid such irritation would be to waive temporarily that clause in the Act of 1905, which makes it illegal to enlist men within the 3-mile limit.

He pointed out that nothing could prevent the American captains from enlisting men outside the territorial waters of Newfoundland, and that to waive the application of the latter part of the first section

of the Act would prevent disputes cropping up, and would promote peace and harmony on the coast of Newfoundland.

I am, &c.

(Signed) EDWARD GREY.

*Lord Elgin to Governor MacGregor.*

[Telegraphic.]

DOWNING STREET, September 29, 1906.

His Majesty's Government were much disappointed by your telegram of 21st September, but felt that, under the circumstances, there was no alternative to course indicated in my telegram of 19th September. United States' Ambassador was informed accordingly on 25th September that His Majesty's Government consent to use of purse seines on the condition stated, and at same time His Majesty's Government expressed hope that recruiting just outside territorial waters will not be resorted to this year. Copy of communication will be sent by next mail.

*Governor MacGregor to Lord Elgin.*

[Telegraphic.]

[Received, September 29, 1906.]

My responsible advisers request me to transmit following message:—  
 "Minister of Finance has received information to-day by telegraph from the Sub-Collector of Customs at Bonne Bay, stating that an American schooner has arrived equipped with purse seines and declines to pay light dues, and desiring to be advised whether the laws are to be enforced. Ministers are placed in a most embarrassing position, not knowing whether agreement has been arrived at between His Majesty's Government and that of the United States by which Americans may use such seines and are exempt from payment of light dues. They desire to be advised promptly as to the exact position of affairs, and whether they are free to enforce the customs and fisheries laws of this Colony against American fishermen."

*Lord Elgin to Governor MacGregor.*

[Telegraphic.]

DOWNING STREET, October 1, 1906.

Will answer your telegram of 29th September as soon as possible. In meantime, please inform your Ministers that United States Ambassador has suggested privately, but not as on behalf of his Government, that in order to minimize inconveniences and discontent arising from use of purse seines by United States' fishermen and the shipping of Newfoundland fishermen outside 3-mile limit, following arrangement might be adopted—viz., Newfoundland Government to



suspend for this season prohibition to engage crews in territorial waters, in return for which United States' vessels would stop using purse seines after 1st November, by which time they would have engaged enough men to work with nets only. Would your Ministers be prepared to entertain such an arrangement?

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*Sir Edward Grey to Sir M. Durand.*

FOREIGN OFFICE, October 1, 1906.

SIR: I told Mr. Carter to-day that the suggestion contained in Mr. Whitelaw Reid's private letter, to suspend the clause in Section 1 of the Act of 1905 which prevented American vessels from recruiting fishermen in Newfoundland waters, if the Americans in return would stop using purse seines after the 1st November, had been telegraphed to the Colony by the Colonial Office. If the Colonial Government accepted the suggestion at once, there would be no difficulty about including it in the *modus vivendi*, but in view of the fact that the legislation of 1906 in the Colony had been suspended, and that this had been done with very great reluctance, I assumed that the point now raised would have to depend entirely on the opinion of the Colony with regard to it.

Mr. Carter asked me whether he was to understand that we wished the *modus vivendi* to be absolutely concluded and put in force at once, without waiting for the new point to be settled.

I said I should like not to answer this question until I had consulted the Colonial Office as to whether they desired to wait for the reply of the Colony on the new point now raised or not, but I would send a reply in a day or two.

I am, &c.

(Signed)

EDWARD GREY.

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*Governor MacGregor to Lord Elgin.*

[Telegraphic.]

[Received October 4, 1906.]

I have been asked by my responsible advisers to transmit following Minute:—

"Referring to your telegram of 1st October, my responsible advisers anxiously await a reply to their Minute of the 28th ultimo, in which they desired to be advised promptly as to the exact position of affairs, and whether they are free to enforce the Customs and Fisheries Laws of this Colony against American fishermen. They would most strongly deprecate any arrangement consenting to the use of purse-seines by American fishermen and to shipping of Newfoundland fishermen, and they are not prepared to consent to local fishermen being engaged to work for Americans in the conduct of fisheries of this Colony. By such a concession the policy of this Government in respect to herring fishery, which received such marked indorsement at the polls in 1904, and is rightly considered by mercantile body as of vital interest to the trade of the Colony, would be completely thwarted. A telegram received from the Sub-Collector

of Customs at Port Saunders to-day states that American schooners 'Norma' and 'Annie M. Parker' from Gloucester arrived that morning and were preparing to seine and net herring for export, and had refused to pay light dues. In another communication from the Sub-Collector of Customs at Bay of Islands, it is stated that Captain Bonia of Gloucester, special agent for Gloucester firms, arrived there by railway on the 28th ultimo, and is engaging men and hiring boats for the full fishery. My responsible advisers again earnestly pray that His Majesty's Government will permit the proclaiming of sections 6 and 7 of 'The Foreign Fishing-Vessels Act, 1906,' so as to enable them to deal with local fisheries, for it is entirely evident that disorder cannot be avoided and the peaceable conduct of the fisheries maintained in any other way."

I have asked my responsible advisers [to] tell me, for your information, from what quarter, at what places, and under what circumstances disorder is expected, and what measures to preserve peace are being taken.

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*Memorandum communicated by the Foreign Office to Mr. Carter,  
October 4, 1906.*

The proposals contained in Mr. Whitelaw Reid's private letter for the suspension of the recruiting clause in section 1 of the Act of 1905, if United States' fishermen would refrain from using purse seines after the 1st November, have been considered by the Newfoundland Government, but they find themselves quite unable to accept them.

In these circumstances His Majesty's Government would be glad to be favoured, at the earliest possible moment, with the views of the United States' Government on the *modus vivendi* proposals contained in Sir E. Grey's Memorandum of the 25th September in order that, if they are accepted, the Colonial Government and United States' fishermen may both be made acquainted at once with the terms of the arrangement proposed, and the necessary instructions given for its observation.

FOREIGN OFFICE, *October 4, 1906.*

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*Governor MacGregor to Lord Elgin.*

[Telegraphic.]

[Received *October 5, 1906.*]

With reference to the last part of my telegram of the 3rd instant, my responsible advisers inform me that they have been apprized that the people of Bay St. George and Bay of Islands regard the usage of purse seines with great disfavour and alarm, and as destructive to their means of livelihood, and threats to destroy them have been expressed. They hold that if number of Newfoundland fishermen engage (to) Americans, the majority will resent this. The Sub-Collector at the Bay of Islands writes that armed force will be wanted, as certain naturalized resident American subjects advise



the people to defy and ignore law. My responsible advisers have sent Inspector of Fisheries to examine position and report, so that proper steps to preserve peace may be taken.

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*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 8 a. m., *October 13, 1906.*)

I am desired by my Responsible Advisers to transmit following message:—

*Begins:* The Committee of Council have had under consideration a telegram received by His Excellency the Governor from the Right Honourable the Secretary of State for the Colonies announcing the conclusion of a *Modus Vivendi* with the Government of the United States. They desire to record their profound regret that His Majesty's Government have seen fit to ignore their representations and entreaties, and to conclude an arrangement which is, they submit, subversive of the Colony's constitutional rights and calculated to work severe injury to the fisheries of the Colony. The Committee also regard with alarm the Cabinet's consent to an arrangement which is apparently intended to over-ride statutes that have received the Royal Assent. They earnestly hope that the arrangement is not beyond reconsideration by His Majesty's Government, and that by annulling the arrangement the Colony may be saved from the humiliation and danger that threatens it. *Minute ends.*—MACGREGOR.

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*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 11.40 a. m., *October 23, 1906.*)

Your telegram of the 12th October.<sup>a</sup> His Majesty's Government deeply regret that *modus vivendi* which has been concluded with the United States Government is not acceptable to your Ministers, but they do not understand grounds on which they base their complaint of subversion of constitutional rights and over-riding of statutes, and they submit that in the circumstances the correctness of their action cannot reasonably be called into question. In any case it is now too late for them to attempt to withdraw from the arrangement and they trust that your Ministers will do what lies in their power to see that it is properly observed.—ELGIN.

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<sup>a</sup> Received 13th October.

*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 10.25 p. m., *October 26, 1906.*)

I am requested by Ministers' minute transmit the following message:—

With reference to your telegram of 23rd instant, my responsible advisers desire to say that in the opinion which they have expressed respecting the subversion of constitutional rights and over-riding of colonial statutes they are supported by the opinion of the Minister of Justice and of learned counsel of high standing in England, and they propose, in accordance with the advice of said counsel, to test the question as to whether the *modus vivendi* can over-ride existing legislation of the Colony by taking legal proceedings against colonial fishermen who have engaged themselves and proceeded in violation of the law to prosecute the herring fishery.

I have endeavoured to ascertain reference to law under which it is intended to proceed, and shall inform you.—MACGREGOR.

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*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 7.40 p. m., *October 27, 1906.*)

Your telegram of 26th October. I shall be glad to have information promised as soon as possible; also to learn substance of opinions referred to, and data on which they were based.

In the meantime please report to what extent provisions of Bait Act making it illegal to haul, catch or take bait fishes for exportation without licence are actually enforced on Colonial fishermen, how many such licences have been granted to Colonial fishermen this year, and whether there have been any prosecutions this year of Colonial fishermen for taking bait fishes for exportation without licence, and if so, how many?—ELGIN.

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*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 7.20 a. m., *November 1, 1906.*)

Referring to your telegram of 27th October, Ministers request me to send you following message:—

Bait Act has been rigidly carried out throughout Colony. No licences have been issued this year to local fishermen to allow them furnish foreigners with bait, nor have any such licences issued in case of the French since 1887 or in case of Americans since 1904, but last year, in deference to desire of His Majesty's Government that this Government should abstain during last season from any action likely to cause friction between the United States fishermen and British subjects no prosecutions were instituted against those who violated



Bait Act by engaging themselves to Americans to catch bait fishes or who sold to Americans. Twenty Colonial fishermen have been prosecuted this year for taking bait fishes for exportation without licence.

Am informed by Prime Minister that English counsel intimates that proceedings may be taken under Cap. 129, Consolidated Statutes, of 1892, or under the Marine and Fisheries Act, 1898.—MACGREGOR.

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*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 9 a. m., November 4, 1906.)

Minister of Justice has prepared instruction for Inspector, Bay of Islands:—

*Instruction begins:* Government has decided on enforcement of provisions of Bait Act during the present herring fishing Bay of Islands. Government has been advised by me that Bait Act is not in any way superseded by terms of *modus vivendi* entered into between His Majesty's Government and the Government of the United States of America. I am desired to request that you will take action immediately against any one of our fishermen who has violated Bait Act. I have instructed Counsel proceed to Bay of Islands and he will advise you as to proper form of summons, &c. Until Counsel arrives you can consider most convenient way to effect service of process on the party whom you may elect as the defendant in the case. *Instruction ends.*

I have requested that instruction may be withheld till 7th November.—MACGREGOR.

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*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 7.5 p. m., November 9, 1906.)

Your telegram, 3rd November.<sup>a</sup> As your Ministers are well aware, the *Modus Vivendi* was arranged with a view to the prevention of action which would embitter the discussion proceeding between His Majesty's Government and the Government of the United States as to the proper meaning of the treaty of 1818—a discussion rendered inevitable by the policy of your Ministers.

With full knowledge of these facts your Ministers have deliberately decided to take action which may immeasurably increase the difficulty of the task which Newfoundland has imposed upon Great Britain. In these circumstances I have to inform your Ministers that, in endeavouring to frustrate the purely temporary measures which His Majesty's Government consider most likely to lead to a successful termination of the negotiations with the United States, they incur a grave responsibility which His Majesty's Government

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<sup>a</sup> Received 4th November.

decline to share. His Majesty's Government will endeavour in the future, as in the past, to defend the claims of Newfoundland under the treaty of 1818 to the best of their ability, but if the difficulties in their way become increased your Ministers must bear the blame.—  
ELGIN.

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*Mr. Reid to Sir Edward Grey.*

AMERICAN EMBASSY,  
LONDON, November 15, 1906.

DEAR SIR EDWARD: Here is the little private and unofficial memorandum promised yesterday.

Believe me, &c.,

WHITELAW REID.

[Enclosure.]

*Points of Fact communicated confidentially and unofficially, in interview of November 14th.*

United States Fishery Agent in Newfoundland reported that on 12th November Colonial authorities summoned crew to appear at Court, Birchy Cove, for enlisting outside three-mile limit. Captain was inclined to ignore summons.

In answer to Agent's request for instructions, State Department said that penal proceedings under such circumstances against men shipped outside three-mile limit appeared plain violation of *modus vivendi*, but Department could not believe Newfoundland Government intended wholesale punishment of their own fishermen for seeking means of livelihood with clear permission from British Government. Department supposed whole purpose was to make a test case, and instructed Agent to ascertain. If so, to avoid conflict or disturbance, was willing, without waiving rights, to facilitate raising and disposition of the question in an orderly way, for which appearance of one or two men in Court would be sufficient. If, on contrary, wholesale arrests were intended, effect would be either to break up or seriously interfere with fishing under the *modus vivendi*, and the Department should be promptly informed.

Department explains desire to avoid any conflict that might excite Colonial feeling or cause embarrassment in dealing with Colony. But if Newfoundland Government really trying to break up fishing under *modus vivendi*, United States could not permit men to be taken from its ships. No doubt of Great Britain's full intention to enforce respect for its agreement, but prompt action seemed necessary.

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*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 7.45 a. m., November 17, 1906.)

Referring to your telegram of 9th November, Responsible Ministers send long reply, summary of which follows:—

(1) They do not see that any reason existed to justify *modus vivendi*, which they think was unnecessary. They refer to your tele-



gram of 8th August, which stated His Majesty's Government were informing United States Government that His Majesty's Government were prepared to negotiate for provisional arrangement, and would shortly submit proposals, from which Responsible Ministers infer that engagement to enter into *modus vivendi* was actually made without reference to opinion of this Government. Responsible Ministers saw they could not prevent the arrangement, but set forth their views and pointed out that *modus vivendi* not necessary, and guaranteed to maintain peace if His Majesty's Government did not interfere with enforcement of statute law against local fishermen. Under the circumstances Responsible Ministers find it impossible to admit any responsibility for *modus vivendi*.

(2) Policy of this Government same for twenty years; to enforce Bait Act against foreigners using bounties or prohibitive duties. In the years 1890 and 1892 American Government undertook to cancel duty on Newfoundland fish, and Newfoundland for fifteen years gratuitously allowed Americans privileges to be conveyed [? continued] under conventions mentioned. United States Government accepted concessions of Newfoundland in the 1890 and 1892 Conventions as *quid pro quo* for remission of duties, which shows United States Government did not think that they had right to purchase bait fishes or employ local fishermen under Treaty of 1818.

(3) Responsible Ministers hold opinion that it is their duty to this people to test validity of an arrangement apparently intended to render nugatory law of Colony, and set aside its constitutional rights. In reply to your telegram 8th August, Responsible Ministers 10th August, referred His Majesty's Government to despatch 26th March, 1857, which declares consent of Newfoundland essential preliminary to any modification of territorial rights or maritime rights, and five days later Responsible Ministers dealt fully with situation and suggested alternative to proposed *modus vivendi*.

(4) Object of Responsible Ministers in instituting legal proceedings under Bait Act as custodians of rights and privileges of public is to test validity of arrangement which, in their opinion, is infringement of constitutional rights of this Colony.

Responsible Ministers are very grateful for assurance that His Majesty's Government will defend claims of Newfoundland under Treaty of 1818, and they assure His Majesty's Government that no unlawful act on their part shall arise to increase difficulties of His Majesty's Government in carrying out this intention. (Summary Minute of Council ends.)

Full text of Minute of Council been posted to-day's post by "Glasgow."—MACGREGOR.

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*Sir Edward Grey to Mr. Reid.*

FOREIGN OFFICE, June 20, 1907.

SIR: On the 20th of July last, Your Excellency communicated to me a letter addressed to you by Mr. Root in which he gave reasons which prevented his agreement with the views of His Majesty's Government as to the rights of American fishing vessels in the waters of Newfoundland under the Convention of 1818.

No reply was returned at the time to the arguments contained in this letter, as the divergence of views between the two Governments made it hopeless to expect an immediate and definitive settlement of the various questions at issue and it was essential to arrive at some arrangement immediately which would secure the peaceable and orderly conduct of the impending fishery season.

Upon the conclusion of the *Modus Vivendi*, His Majesty's Government further deferred any additional observations on the questions at issue until the arrival in this country of the Premier of Newfoundland to attend the Imperial Conference.

They have now had the advantage of a full discussion with Sir R. Bond, and although His Majesty's Government are unable to modify the views to which they have on various occasions given expression, of the proper interpretation of the Convention of 1818 in its bearing on the rights of American fishermen, they are not without hope, having regard to the willingness of the United States Government from a practical point of view to discuss reasonable and suitable regulations for the due control of the fishermen of both countries, that an arrangement may be arrived at which will be satisfactory to both countries.

I desire at the outset to place on record my appreciation of the moderation and fairness with which Mr. Root has stated the American side of the question and I shall in my turn endeavour to avoid anything of a nature to embitter this long-standing controversy.

It will be convenient to recapitulate the main grounds of divergence between the two Governments on the question of principle.

His Majesty's Government, on the one hand, claim that the Treaty gave no fishing rights to American vessels as such, but only to inhabitants of the United States and that the latter are bound to conform to such Newfoundland laws and regulations as are reasonable and not inconsistent with the exercise of their Treaty rights. The United States Government, on the other hand, assert that American rights may be exercised irrespectively of any laws or regulations which the Newfoundland Government may impose, and agree that as ships strictly speaking can have no rights or duties, whenever the term is used, it is but a convenient or customary form of describing the owners' or masters' rights. As the Newfoundland fishery, however, is essentially a ship fishery, they consider that it is probably quite unimportant which form of expression is used.

By way of qualification Mr. Root goes on to say that if it is intended to assert that the British Government is entitled to claim that, when an American goes with his vessel upon the Treaty Coast for the purpose of fishing, or with his vessel enters the bays or harbours of the coast for the purpose of obtaining shelter, and of repairing damages therein, or of purchasing wood, or of obtaining water, he is bound to furnish evidence that all the members of the crew are inhabitants of the United States, he is obliged entirely to dissent from any such proposition.

The views of His Majesty's Government are quite clear upon this point. The Convention of 1818 laid down that the inhabitants of the United States should have for ever in common with the subjects of His Britannic Majesty the liberty to take fish of every kind on the coasts of Newfoundland within the limits which it proceeds to define.

This right is not given to American vessels, and the distinction is an important one from the point of view of His Majesty's Government,



as it is upon the actual words of the Convention that they base their claim to deny any right under the Treaty to American masters to employ other than American fishermen for the taking of fish in Newfoundland Treaty waters.

Mr. Root's language, however, appears to imply that the condition which His Majesty's Government seek to impose on the right of fishing is a condition upon the entry of an American vessel into the Treaty waters for the purpose of fishing. This is not the case. His Majesty's Government do not contend that every person on board an American vessel fishing in the Treaty waters must be an inhabitant of the United States, but merely that no such person is entitled to take fish unless he is an inhabitant of the United States. This appears to meet Mr. Root's argument that the contention of His Majesty's Government involves as a corollary that no American vessel would be entitled to enter the waters of British North America (in which inhabitants of the United States are debarred from fishing by the Convention of 1818) for any of the four specified purposes, unless all the members of the crew are inhabitants of the United States.

Whatever may be the correct interpretation of the Treaty as to the employment of foreigners generally on board American vessels, His Majesty's Government do not suppose that the United States Government lay claim to withdraw Newfoundlanders from the jurisdiction of their own Government so as to entitle them to fish in the employment of Americans in violation of Newfoundland laws. The United States Government do not, His Majesty's Government understand, put their claim higher than that of a "common" fishery, and such an arrangement cannot override the power of the Colonial Legislature to enact laws binding on the inhabitants of the Colony.

It can hardly be contended that His Majesty's Government have lost their jurisdiction not only over American fishermen fishing in territorial waters of Newfoundland, but also over the British subjects working with them.

It may be as well to mention incidentally in regard to Mr. Root's contention that no claim to place any such restriction on the French right of fishery was ever put forward by Great Britain; that there was never any occasion to advance it, for the reason that foreigners other than Frenchmen were never employed by French fishing vessels.

The main question at issue is, however, that of the application of the Newfoundland regulations to American fishermen. In this connection the United States Government admit the justice of the view that all regulations and limitations upon the exercise of the right of fishing upon the Newfoundland Coast, which were in existence at the time of the Convention of 1818, would now be binding upon American fishermen. Although Mr. Root considers that to be the extreme view which His Majesty's Government could logically assert, and states that it is the utmost to which the United States Government could agree, His Majesty's Government feel that they cannot admit any such contention, as it would involve a complete departure from the position which they have always been advised to adopt as to the real intention and scope of the treaties upon which the American fishing rights depend. On this vital point of principle there does not seem to be any immediate prospect of agreement with United States views, and it would, therefore, seem better to endeavour

to find some temporary solution of the difficulty as to the regulations under which the Americans are to fish.

His Majesty's Government note with satisfaction Mr. Root's statement that the American Government are far from desiring that the fishery should go unregulated, and believing as they do that the Newfoundland regulations have been framed with the intention of preserving and maintaining the fishery in the most efficient and productive condition, and for the prevention of practices that must be detrimental to the common interests they propose to communicate a copy of all the regulations that are now in force, and if there is anything in these regulations which the United States Government feel to bear hardly upon the American fishermen, His Majesty's Government will gladly pay the utmost consideration to any American representations on the subject with a view to the amendment of the regulations in the sense desired, provided that such be consistent, with the due preservation of the fishery.

Pending this examination of the regulations, His Majesty's Government would propose the following arrangements as to the provisions in the Newfoundland enactments that have been most discussed.

These are the obligation to report at a Custom House and to pay light dues, and the prohibition to use purse seines, and to fish on Sundays. Other regulations, such as the prohibition to throw ballast or rubbish into the water frequented by herring, and to throw overboard on the fishing ground fish offal, heads and bones, have occasionally come in question, but are clearly reasonable, and are not, it is believed, objected to by the United States Government. Fishing at night is another question which has been discussed, although it is not forbidden by the regulations. His Majesty's Government understand that by tacit consent among the fishermen themselves fishing is not pursued at night, and with this arrangement there seems no reason to interfere.

With regard to the entry and clearance of American vessels at Newfoundland ports, I would remind Your Excellency that the American vessels engaged in the winter fishery in the Bay of Islands must pass in close proximity to several Custom Houses, and that it cannot be said that the obligation to report and clear unduly interferes with the operations of the vessels. On this point, however, His Majesty's Government would, in order to secure an arrangement for the next fishing season, be prepared to defer discussion of the question of right; but they would urge, on the other hand, that it would be most advisable that American vessels should comply with the regulation on the ground that unless the vessels enter at the Custom Houses, the British authorities have no cognizance that they are in Newfoundland waters, and that, as His Majesty's Government are responsible for keeping the peace, it is important that they should know exactly what American vessels are on the fishing grounds. Moreover, the provision in question is clearly necessary for the prevention of smuggling, and unless American vessels have made proper entry at a Custom House, there is no means, short of searching the vessels, of ascertaining whether they are really fishing vessels, and not smugglers.

The next point in dispute is the prohibition of purse seines. His Majesty's Government have the independent testimony of British



naval officers who have been employed on the Treaty Coast as to the destructive results of their use; and they would, therefore, point out that there is complete justification for the Colonial regulation.

I would, moreover, remind Your Excellency that the regulation is in force in all the waters of the Colony of Newfoundland and of the Dominion of Canada, and applies equally to all fishermen whether they be Newfoundlanders or not. His Majesty's Government, therefore, feel that they cannot interfere with the enforcement of the regulation which prohibits purse seines in the waters of Newfoundland. They would also point out that fishing on Sundays is always liable to lead to regrettable breaches of the peace, and they would propose that the American fishermen should agree to abstain from this practice.

Finally, His Majesty's Government feel that the payment of light dues by an American vessel entering a port of the Colony clearly does not involve an unreasonable interference with the exercise of the treaty rights of the American fishermen on board. These dues are payable by all vessels of whatever description and nationality, other than coasting and fishing vessels owned and registered in the Colony. As, however, vessels of the latter class are under certain conditions exempt either wholly or in part from payment, His Majesty's Government consider that it would be unfair to introduce any discrimination against American vessels in this respect, and it is proposed that the demand for light dues should be waived under the same conditions as in the case of the Newfoundland vessels.

I venture to express the hope that the temporary arrangement outlined above will be agreed to by the United States Government.

I have, &c.,

E. GREY.

His Excellency the Honourable WHITELAW REID, &c., &c., &c.

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*Mr. Reid to Sir Edward Grey.*

AMERICAN EMBASSY, LONDON, *July 12, 1907.*

SIR: Referring to your letter of June 20th, in relation to the Newfoundland Fisheries, I beg to say that while its propositions seemed so much in conflict with our views on the subject that my previous instructions would have enabled me to make an immediate reply, I hastened to lay them before my Government.

Before communicating the result I desire to acknowledge and reciprocate to the full the kindly expressions you have been good enough to use as to the moderation and fairness with which Mr. Root has stated the American side of the case. We have had the same appreciation of your conduct of the discussion, and we share your wish to bring the long-standing controversy on the subject to a satisfactory conclusion without having added anything tending in the slightest degree to embitter it.

But with the utmost desire to find in your last letter some practical basis for an agreement, we are unable to perceive it. Acquiescence in your present proposals would seem to us equivalent to yielding all the vital questions in dispute, and abandoning our fishing rights on the coast of Newfoundland under the Treaty of 1818.

Without dwelling on minor points, on which we would certainly make every effort to meet your views, I may briefly say that in our opinion, sustained by the observations of those best qualified to judge, the surrender of the right to hire local fishermen, who eagerly seek to have us employ them, and the surrender at the same time of the use of purse seines and of fishing on Sunday would, under existing circumstances, render the Treaty stipulation worthless to us.

My Government holds this opinion so strongly that the task of reconciling it with the positions maintained in your letter of June 20th seems hopeless.

In this conviction my Government authorises me, and I now have the honour, to propose a reference of the pending questions under the Treaty of 1818 to arbitration before the Hague Tribunal.

We have the greater reason to hope that this solution may be agreeable to you since your Ambassador to the United States recently suggested some form of arbitration, with a temporary *modus vivendi* pending the decision, as the best way of reaching a settlement. We hope also that the reference of such a long-standing question between two such nations at such a time to the Hague Tribunal might prove an important step in promoting the spread of this peaceful and friendly method of adjusting differences among all civilised countries of the world.

If this proposition should be agreeable to you we should trust that the conclusion might be reached in so short a period that the continuation in force meantime of the *modus vivendi* I had the honour of arranging with you last year could work no real hardship to any British or Colonial interests. In its practical operation last year it resulted in voluntary arrangements by which our fishermen gave up purse seines. They did, however, employ Newfoundland fishermen. We do not think the continued employment of men so eager for the work, and the consequent influx of their wages into the Colony could, for the short time involved, work the Colony any harm. But if for any reason you should find it unsuitable or inconvenient to renew for so short a time this feature of the *modus vivendi*, we should be compelled to insist on the use of purse seines for the reason already stated. To give that up too we should consider under existing circumstances as giving up altogether our Treaty rights of fishing on that coast.

Hoping that in these proposals we have made an offer not only indicating our earnest desire to reach a mutually satisfactory arrangement, but an honourable and agreeable means of doing so,

I have, &c.,

WHITELAW REID.

Sir EDWARD GRAY, Bart., &c., &c., &c.

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*Lord Elgin to Governor MacGregor*

DOWNING STREET, July 19, 1907.

SIR: I have the honour to transmit to you, to be laid before your Ministers, copy of a note addressed by the Secretary of State for Foreign Affairs to the United States Ambassador at this Court proposing a *modus vivendi* regarding the American fishery rights in Newfoundland waters for the season of 1907.



2. The proposals embodied in this note have formed the subject of repeated discussions with your Prime Minister, who received a copy of the note before his departure from England; but I regret to inform you that they have not altogether met his wishes. I shall, therefore, explain briefly the reasons which have induced His Majesty's Government to adopt the views expressed in the note to Mr. Whitelaw Reid.

3. The expiration of the *modus vivendi* for the season of 1906 left matters as they stood in the earlier part of that year. The Government of the United States asserted that the fishery privileges granted to them in Newfoundland waters by the Treaty of 1818 were to be exercised independently of any Colonial regulations, while His Majesty's Government claimed that it was within the power of the Colonial Government to enact such regulations as did not interfere with the exercise of the American right. Under these circumstances His Majesty's Government were compelled to take into consideration what arrangements could be made for the season of 1907.

4. Sir R. Bond suggested in his speech at the Colonial Conference of the 14th of May that the rights granted to the inhabitants of the United States under the Treaty of 1818 were not set forth in language that was ambiguous, and he asked that His Majesty's Government should define the rights of American citizens under the Treaty. But His Majesty's Government have already intimated to the United States Government the extent of the rights conferred, in their view, on the American fishermen by the Treaty, and that definition has not been accepted by the Government of the United States, who, on their part, contend that the words of the Treaty bear precisely the opposite meaning to that assigned to them by Sir R. Bond. His Majesty's Government adhere to the interpretation of the Treaty conveyed in Sir E. Grey's note to Mr. Whitelaw Reid of the 2nd of February, 1906, but your Ministers will realise that it is impossible for one party to a treaty to force its own interpretation of the meaning of the treaty upon the other party.

5. Recourse must, therefore, be had to diplomacy for a settlement of the points at issue, and His Majesty's Government will use every effort to secure results favourable to Newfoundland, but obviously some arrangement *ad interim* was essential for the approaching season. Sir R. Bond suggested as a solution of the question that the assent of the Crown should be given to the Act of 1906, and that the Colonial Government should be permitted to enforce its laws for the regulation of the fisheries.

6. To adopt this suggestion would have led to strong protests from the United States Government, which would justly have pointed out that His Majesty's Government were thus adopting their own interpretation of the treaty in an extreme form. It would have involved compelling the American fishermen to conform to Customs laws, to pay light dues, not to use purse seines or fish on Sundays, and would have deprived them of the assistance of Newfoundland fishermen in carrying on their operations. His Majesty's Government, therefore, felt that some arrangement must be made unless serious difficulties were to be raised as soon as fishing commenced.

7. His Majesty's Government have, therefore, decided not to insist on American vessels calling at Customs Houses—though they have suggested to the United States Government good reasons why such vessels should call—and to exempt those vessels from payment of

light dues in cases where similar vessels registered and owned in the Colony are exempt. They recognised that those concessions are substantial, but they consider that they are the least injurious to the interests of the Colony. On the other hand, they have pressed the right of the Colonial Government to prevent Newfoundlanders serving on American vessels, and they have urged the United States Government to accept the prohibition of the use of purse seines and of Sunday fishing. These proposals are now under the consideration of the United States Government, and no effort will be spared to secure the most favourable terms possible for Newfoundland pending the further discussion of the main questions at issue.

8. His Majesty's Government earnestly trust that in the carrying out of any *modus vivendi* which may be found necessary, and in the conduct of negotiations, they will receive the fullest co-operation of the Newfoundland Government. In his speech at the Colonial Conference Sir R. Bond repudiated any desire to limit the treaty rights of American citizens, and asked for nothing but justice and responsibility sanctioned by the spirit and forms of the British Constitution. His Majesty's Government feel, therefore, entitled to rely on his help in arranging conditions on which the fishery may be carried on pending the final settlement of the dispute with the United States as to the meaning of the Treaty of 1818; for they have no doubt that your Ministers will agree that the strict observance of treaty obligations is binding upon all portions of the British Empire.

I have, &c.,

ELGIN.

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Lord Elgin to Governor MacGregor.

[Telegram.]

(Sent 5.15 p.m., July 23, 1907.)

We have now received answer from the United States Ambassador to our note of the 20th June, which was shown to your Prime Minister, and a copy of which was privately sent to you on the 21st June. The effect of the note is that the United States Government cannot give their acquiescence to the present proposals of His Majesty's Government which they feel would be tantamount to yielding all vital questions in dispute. In their opinion the surrender of the right to hire local fishermen, and the surrender at the same time of the use of purse seines and of fishing on Sunday would render their treaty rights worthless. We are, therefore, face to face with a reference of pending questions to arbitration and an *ad interim* renewal of the *Modus Vivendi*. The United States Ambassador has proposed arbitration before the Hague Tribunal and suggests that a conclusion to the proceedings will be reached in so short a time that last year's *Modus Vivendi* can be continued without causing any real hardship to the Colony. If, however, we refused to renew the agreement as to the employment of Newfoundland fishermen, they would be compelled to insist on the use of purse seines. To give up both points they would consider equivalent to abandoning altogether their treaty rights.

From the proceedings at the Conference and also from the correspondence which took place with me, His Majesty's Government are aware that Sir R. Bond is desirous to have all the outstanding ques-



tions settled by arbitration before the Hague Tribunal, and the United States Government are being so informed, and a communication will be addressed to you on procedure relating to that subject, but I shall be glad, in the meantime, of the observations of your Prime Minister upon the continuance of last year's *Modus Vivendi*, especially whether he attaches more importance to the prohibition of the employment of Newfoundland fishermen or to that of the use of purse seines. Telegraph reply.—ELGIN.

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*Lord Elgin to Governor-General Grey.*

[Telegram.]

(Sent 5.25 p.m., August 8, 1907.)

Fishery dispute between United States and Newfoundland.

As your Prime Minister is aware, Newfoundland Government expressed desire for reference of dispute to the Hague Tribunal. American Government have now declared that they cannot acquiesce in proposals which, after consulting Sir R. Bond, His Majesty's Government have made to them for amicable settlement of dispute and which went further than Bond wished; and they also have asked that pending questions under Treaty of 1818 may be referred to the arbitration of the Hague Tribunal.

We are of opinion that it would be out of the question to refuse this proposal, pressed upon us as it is both by Newfoundland and the United States Government, but before replying to United States we should be glad to learn whether your Government agree in principle. If so, you will be further consulted in due course in regard to terms of reference, procedure, costs, &c.—ELGIN.

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*Governor-General Grey to Lord Elgin.*

[Telegram.]

(Received 8.10 p. m., August 14, 1907.)

Referring to your telegram of the 8th August, respecting the fishery question, opinion is still entertained by my responsible advisers that the Treaty of 1818 concerning right of American fishermen in British waters is clear and without ambiguity. Since, however, Government of Newfoundland has expressed a wish for reference of the dispute to the Hague Tribunal they deem it their duty to assist Newfoundland, and to agree to such a reference.—GREY.

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*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 7.45 p. m., August 30, 1907.)

I have laid before Ministers a telegram received from Mr. Bryce stating that he has been informed by the United States Government that the unarmed revenue cutter "Gresham" sails on 1st September

for Canadian and Newfoundland waters, conveying Mr. Alexander, of the United States Fisheries Protection Department, to advise American fishermen, as was done last year, and requesting that facilities and courtesies may be afforded to the ship and the officers.

My Ministers take up the position that if the proposal submitted to His Majesty's Government with reference to the conduct of the fishery upon the Treaty coast during coming season is accepted, the presence of United States cutter is absolutely unnecessary, and would only prove a source of irritation. If the proposal is not accepted, then they assume that the presence of that cutter in the territorial waters of this Colony is in connection with a *modus vivendi* arranged between His Majesty's Government and the United States of America, and as they cannot be consenting parties to the *modus vivendi* outlined in your telegram of 10th instant, they must respectfully protest against the establishment of a dual authority in Newfoundland waters, which the presence there of the cutter "Gresham" would constitute.

I concur with my responsible advisers that the American cutter would be unnecessary were the proposal accepted.

I have sent the following message to Mr. Bryce:—

"Your telegram of the 26th of August. My Ministers have submitted proposals for next season's fishery which, if accepted by the United States Government, would, in their opinion, make the presence of American cutter unnecessary and not desirable. If proposals are not accepted Ministers protest against the dual authority that would be instituted by presence of American cutter in Newfoundland waters."—MACGREGOR.

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*Lord Elgin to Governor MacGregor.*

DOWNING STREET, August 31, 1907.

SIR: As it has been decided, with the concurrence of the Government of the Dominion of Canada, to submit to arbitration the questions at issue between His Majesty's Government and the Government of the United States of America with regard to the interpretation of the fishery clauses of the Treaty of 1818 between Great Britain and the United States, I have the honour to request that you will ask your Ministers to be so good as to prepare a draft of the terms of reference to the Hague Tribunal for consideration by His Majesty's Government, and for submission to the Government of the United States.

2. As the Government of the Dominion of Canada has expressed its willingness to co-operate with your Government in the conduct of the arbitration, I shall be glad if your Ministers will consult with the Dominion Government in drawing up the terms of reference, and also as to the mode in which the expenses of the arbitration will be defrayed.

3. A despatch in similar terms has been addressed to the Governor-General of Canada.

I have, &c.,

ELGIN.



*Lord Elgin to Governor-General Grey.*DOWNING STREET, *August 31, 1907.*

MY LORD: As it has been decided, with the concurrence of Your Excellency's Government, to submit to arbitration the questions at issue between His Majesty's Government and the Government of the United States of America with regard to the interpretation of the fishery clauses of the Treaty of 1818 between Great Britain and the United States, I have the honour to request that you will ask your Ministers to be so good as to draw up, in consultation with the Government of Newfoundland, a draft of the terms of reference to the Hague Tribunal for the consideration of His Majesty's Government, and for submission to the Government of the United States.

2. Your Ministers will also no doubt desire to consult with the Newfoundland Government as to the mode in which the expenses of the arbitration will be defrayed.

3. A similar despatch has been addressed to the Governor of Newfoundland.

I have, &amp;c.,

ELGIN.

*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 3.15 p. m., *September 1, 1907.*)

In reply to your telegram of the 30th August, I have received a letter from my Ministers of which a *résumé* follows:—

"My Ministers deeply regret that their proposal, which was made as an honourable compromise, has not been accepted. They do not understand how the proposal can be said to be too late, as the fishery does not begin for four or five weeks from now, and the vessels cannot have started yet. They fear that Mr. Alexander may advise the American fishermen that they may with impunity violate the statute laws of this Colony.

My Ministers feel most acutely the manner in which their representations have again been received by His Majesty's Government; they made clear their position in regard to the *modus vivendi* in their minutes of the 1st, 20th, and 22nd of August, to which they adhere, and they cannot consent to the overriding of the constitution of this Colony and the suspension of its laws. My Ministers, however, still desire to aid His Majesty's Government as far as possible consistently with their duty to this Colony, and the preservation of its rights; they will, therefore, grant permission to the fishermen of the Treaty Coast to sell to Americans during the coming season on the receipt of an assurance from His Majesty's Government that the terms of reference to the Hague Tribunal shall include the question of the right of American vessels to fish or trade in any of the bays, harbours, or creeks of that portion of Newfoundland Coast between Cape Ray and Quirpon Islands, together with all other questions that may be raised under the Treaty."

MACGREGOR.

*Governor MacGregor to Lord Elgin.*

GOVERNMENT HOUSE, ST. JOHN'S,  
September 2, 1907. (Received September 14, 1907.)

MY LORD: I have the honour to transmit, for your information, copy of a letter, dated 31st August, which I received from my Prime Minister.

Your Lordship will not fail to notice that while my Ministers adhere to the principles they have hitherto maintained in regard to the binding force of the laws of this Colony on American fishermen in the territorial waters of Newfoundland; and while they continue to think that their representations with regard to the *modus vivendi* have not received the attention and consideration to which they were entitled, yet they are at the same time desirous of lending every assistance to His Majesty's Government in this difficult and complicated case, which is declared by your Lordship to involve important imperial interests. It is in this spirit, and in full confidence of a favourable result to this Colony if the whole question is submitted to the Hague Tribunal, that my Ministers now propose what they deem to be a practical working arrangement for next season's fishery, under which operations should be carried on temporarily without friction, and, of course, without prejudice to the merits of the case for this Colony before the International Tribunal.

2. It may be presumed that neither His Majesty's Government nor that of the United States would desire to withhold any part of the case from consideration, a complete and full representation of which is clearly necessary and desirable in order to arrive at finality, and to save future misunderstanding. Your Lordship is, for example, aware that my Prime Minister has consistently disputed the right of American fishermen to fish or trade in the bays, harbours, and creeks of the West Coast, a point of great importance on which special stress is laid in the letter copy of which is enclosed.

I would, therefore, respectfully express the hope that your Lordship may be able to meet the strong desire of this Government that the reference to the Hague Tribunal shall cover the whole case as far as it affects the interests of this Colony.

3. I enclose copy of the reply I have addressed to my Prime Minister to his communication referred to above.

I have, &c.,

WM. MACGREGOR.

*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 3.15 p. m., September 2, 1907.)

Your telegram, 1st September. It will be necessary to refer to United States Government the question of the terms of arbitration; but provided that your Government now accept proposed *modus vivendi*, His Majesty's Government would favourably consider the reference to arbitration of question of bays. I do not, however, gather from your telegram whether your Ministers propose to accept *modus vivendi*, and to permit American vessels to employ Newfound-



land fishermen on terms mutually arranged, or merely to allow Newfoundland fishermen to sell fish to Americans.

There is no chance of American Government accepting any arrangement under which American vessels not allowed to employ Newfoundland fishermen.

Please reply immediately as American vessels have already sailed, and the arrangements must be concluded at once.—ELGIN.

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*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 5.45 p. m., September 2, 1907.)

My telegram of to-day. If *modus vivendi* accepted United States Ambassador says he will add to his Note that his Government would be quite willing to give the most favourable consideration to any arrangement which your Ministers might make with American fishermen on arrival in modification or supersession of *modus vivendi*. Trust this proves satisfactory to your Ministers in view of last paragraph of your telegram 20th August.—ELGIN.

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*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 2.48 p. m., September 3, 1907.)

Your telegram, 30th August. You will have learned from my telegram, 30th August, that United States Government have refused your Ministers' proposal on ground that vessels have already started for fishery, and that His Majesty's Government have consented to adhere to arrangement in force in 1906 subject to omission of right to use purse seines. We cannot prevent despatch of "Gresham" to Newfoundland waters; the only question, therefore, which arises is the treatment to be accorded to it. To refuse ordinary courtesies would cause bad feeling which it is especially desirable to avoid during negotiation of Arbitration Treaty, and might further involve withdrawal of courtesies accorded to British naval vessels in United States waters. In any case it is not desirable that an opportunity should be given to United States Government to represent to an arbitral tribunal that Newfoundland in any respect refuses to act in accordance with the comity of nations. I earnestly hope, therefore, that Ministers will reconsider their attitude.

With all deference to your Ministers we cannot see why they should so strongly object to presence of responsible American official during fishery; he will be useful in preventing improper action by American fishermen, and he will be able to sift any alleged grievance of American fishermen before it is brought to notice of United States Government.—ELGIN.

*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 1.5 a. m., September 4, 1907.)

In reply to your telegrams of the 2nd September, my Ministers have requested me to transmit the following message to you:—

“Referring to your telegrams of 2nd instant, my Ministers cannot accept the *modus vivendi*. It must be apparent to His Majesty’s Government that their proposal contained in my telegram of 1st instant, entirely obviates any necessity for the same as it permits Americans to purchase herring on Treaty Coast as they did prior to 1904. My Ministers find it difficult to conceive what more can be desired.”

MACGREGOR.

*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 4 p. m., September 6, 1907.)

His Majesty’s Government have received with much regret the reply of your Ministers, contained in your telegram of 3rd September, to my telegrams of 2nd September. Whatever might be the objections which could be urged against the conclusion of a *modus vivendi* last year, they do not consider that such objections can be held valid with regard to a *modus vivendi* made expressly with the purpose of tiding over the time which must necessarily elapse before the decision of the Hague Tribunal is obtained. That the terms of the *modus vivendi* should not have been acceptable to your Ministers they much regret, but some concession to the United States Government was imperative, and by my telegram of 23rd July your Prime Minister was so informed, and expressly invited to advise as to whether he preferred to permit the United States fishermen to use purse seines or to employ Newfoundland fishermen. No reply was received to this express enquiry, and His Majesty’s Government, in view of the language used by your Prime Minister during the discussion in London, and of the danger of conflicts between Newfoundland and American fishermen should the latter try to use purse seines, and thus interfere with the fishing of the former, therefore decided to forbid the use of purse seines, thus securing a much more favourable arrangement for your Government than was the case last year. Further, His Majesty’s Government have obtained an undertaking from the United States Government to consider favourably any arrangement made by your Ministers with the American fishermen on arrival in modification of, or in supersession of, the *modus vivendi*, and they gather from your telegram of the 30th August that your Ministers contemplate an arrangement satisfactory to both parties.

His Majesty’s Government, therefore, hope that the Newfoundland Government will loyally co-operate in making effective the *modus vivendi*, the conclusion of which can no longer be delayed in view of the representations of the United States Government. It should be clearly understood that the *modus vivendi* confers no immunity on Newfoundlanders who disobey the laws of the Colony, but merely



secures the American vessels unimpeded exercise of Treaty Rights pending the decision of the Arbitral Tribunal as to the extent of Colonial jurisdiction. I may add that His Majesty's Government will urge the United States Government to submit to arbitration any point on which your Government and the Government of Canada are agreed. They cannot, however, give a pledge as to any one point until the views of the Dominion Government are known.

I will send text of *modus vivendi* as soon as it is available.—ELGIN

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*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 3.20 p. m., September 7, 1907.)

Referring to my telegram of yesterday's date, following *modus vivendi* as embodied in Note from United States Ambassador has been concluded:—

1. It is understood that His Majesty's Government will not bring into force the Newfoundland Foreign Fishing Vessels Act of 1906, which imposes on American fishing vessels certain restrictions in addition to those imposed by the Act of 1905, and also that the provisions of the first part of Section 1 of the Act of 1905, as to boarding and bringing into port, and also the whole of Section 3 of the same Act, will not be regarded as applying to American fishing vessels.

2. In consideration of the fact that the shipment of Newfoundlanders by American fishermen outside the three mile limit is not to be made the basis of interference nor to be penalised, my Government waives the use of purse seines by American fishermen during the term governed by this agreement, and also waives the right to fish on Sundays.

3. It is understood that American fishing vessels will make their shipments of Newfoundlanders as fishermen sufficiently far from the exact three mile limit to avoid reasonable doubt.

4. It is further understood that American fishermen will pay light dues when not deprived of their rights to fish, and will comply with the provisions of the Colonial Customs Law as to reporting at a Custom House when physically possible to do so.

But my Government has every desire to make the arrangement, pending arbitration, as agreeable as possible to the Newfoundland authorities, consistent with the due safeguarding of Treaty Rights which we have enjoyed for nearly a century. If, therefore, the proposals you have recently shown me from the Premier of Newfoundland or any other changes in the above *modus vivendi* should be proposed by mutual agreement between the Newfoundland authorities and our fishermen, having due regard to the losses that might be incurred by a change of plans so long after preparations for the season's fishing had been made, and the voyage begun, my Government will be ready to consider such changes with you in the most friendly spirit, and if found not to compromise our rights, to unite with you in ratifying them at once.

Please communicate at once to your Ministers, but do not publish till Monday. United States Ambassador has promised to delay publication till then.—ELGIN.

*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 2.40 p. m., September 9, 1907.)

With reference to my telegram of 7th September, His Majesty's Government have had under their careful consideration the measures necessary to fulfil the undertaking given to the American Government in connection with *modus vivendi* that the shipping of Newfoundland fishermen by American vessels shall not be penalised. In doing so they are most anxious in no way to detract from your Government's control over Newfoundland fishermen, and they have, therefore, decided that it would be most satisfactory to pass an Order in Council under the Act 59, Geo. III., ch. 38, Section 1, which will forbid the serving of process on board any American vessel or arrest of any vessel or of its gear, &c. They consider that this Order, while ensuring to the Americans the undisturbed enjoyment of the fishery in accordance with the *modus vivendi*, will cause the least inconvenience to the Government of Newfoundland, as it merely gives legal sanction to the arrangement in force last year under which the fishery was conducted without serious disturbance or breach of the peace.

His Majesty's Government invite the co-operation of your Government in carrying out the Order and have instructed the Senior Naval Officer on the station to render them every assistance in maintaining the law of the Colony as modified by the Order. They will be prepared to revoke or modify its provisions immediately a satisfactory arrangement is made by the Colonial Government with the American fishermen as contemplated in the *modus vivendi*, or the *modus vivendi* is accepted by your Government.

His Majesty's Government feel compelled, however, to place on record their deep regret that they should have had no alternative in consequence of the action of your Ministers but to avail themselves of the legal powers conferred on them by the Act 59 Geo. III.

His Majesty's Government recognise to the full the inconvenience caused to the Government of Newfoundland by the treaty obligations binding upon it, but these obligations were not created by His Majesty's Government, and in 1904 this country made no inconsiderable sacrifice of territory and money in order to reduce the pressure of French treaty rights. I may remind your Ministers that in this case the Government of Canada have, in order to meet their wishes, consented to share in the arbitration, although they have already obtained a friendly understanding with the United States. His Majesty's Government consider, therefore, that they were entitled to expect your Government's co-operation in arranging a new temporary *modus vivendi* pending the decision of the Arbitral Tribunal to which, in deference to your Government's wishes, the whole question is shortly to be referred.

The Order in Council is being telegraphed separately.—ELGIN.



*Lord Elgin to Governor MacGregor.*DOWNING STREET, *September 11, 1907.*

SIR: With reference to my telegram of the 9th of September, I have the honour to transmit to you, to be laid before your Ministers, copies of an Order in Council of the 9th instant, giving directions with regard to the taking, drying, and curing of fish by the inhabitants of the United States of America in common with British subjects on the coasts of Newfoundland.

I have, &amp;c.,

ELGIN.

*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 7.39 a. m., *September 12, 1907.*)

My Ministers have handed in a lengthy minute dealing with your telegrams of the 6th and 9th September, which my Ministers have epitomized as follows:—

They expected that His Majesty's Government would have recognised in their proposal an honourable compromise which, while upholding the sovereignty of the Colonial law, permitted the Americans to obtain herring precisely as they had ever done prior to 1904. They point out that while their proposal would have secured the harmonious conduct of the fishery, the forcing upon this Colony of an objectionable arrangement is calculated to engender feelings of ill-will and resentment among His Majesty's subjects.

They also point out that a reply to your enquiry of 23rd July was sent on the 1st of August.

They enter a protest against the submission of this Colony's case being prejudiced by Canadian Government or subjected to its approval.

They observe that while telegram of 9th September, which accompanied Order in Council, intimated the willingness of His Majesty's Government to revoke or modify its provisions provided that satisfactory arrangement is made by them with American fishermen or *modus vivendi* is accepted, the initial paragraph of telegram embodying text of Order in Council directs its publication and transmission to Senior Naval Officer. They consider that they are at least entitled to reasonable time in which to consider this proposal before Order in Council is promulgated, and again point out that fishery will not commence before at least month from date and that if suggestion of His Majesty's Government is deemed practicable no negotiation could take place until arrival of American fishermen. They ask, therefore, that they be allowed reasonable time to consider what their course of action should be before publication of Order in Council in view of fact that they could not have foreseen infliction on this Colony of such humiliation, which is calculated to prejudice this Colony's case before the Hague Tribunal.

The full minute goes by the post of 12th September. I hope you may delay publication of the Order in Council and communication to the Senior Naval Officer till you have the full text.

His Majesty's ship "Brilliant" left 11th September for Halifax; it is not required at the present time here.—MACGREGOR.

*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 12.45 p. m., September 14, 1907.)

Your telegram 11th September. His Majesty's Government regret that the résumé of your Ministers' Minute which they give affords no ground justifying the revocation of the Order in Council. I am anxious, in the difficult position which has arisen, to show your Ministers all possible courtesy and consideration, but I cannot encourage any hope that the Order in Council will be revoked without publication unless your Ministers accept without reserve the *modus vivendi* and undertake to carry it out in its entirety. I will delay publication as long as possible to enable your Ministers fully to consider the situation, but I cannot consent to run any risk of further complicating the difficult international position by allowing the possibility of His Majesty's Order in Council being questioned on the ground of non-publication: and while I authorize you to withhold publication for the present, it is only on the distinct understanding that you are instructed to publish the Order in Council immediately on the arrival of the American fishermen, unless before that date your Ministers have accepted the *modus vivendi*.

Acceptance of *modus vivendi* will not prejudice modification or supersession by agreement with American fishermen.—ELGIN.

*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 5.22 p.m., September 15, 1907.)

The "Gresham" arrived here on the 14th instant. Shall I publish the Order in Council or wait for the fishing vessels?—MACGREGOR.

*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 1.45 p.m., September 16, 1907.)

Your telegram 15th September. You should inform your Ministers arrival of "Gresham" renders it essential for you to publish Order in Council unless they are prepared to accept *modus vivendi*, and you should ask for an immediate reply, which you will at once send to me. Your Ministers should clearly understand that in the event of unfavourable reply His Majesty's Government will have no alternative but to at once publish Order in Council, a course which, though inevitable, is to be regretted, and the responsibility for which will, in the circumstances, rest on your Government.

If in the meantime fishing ships arrive you must, in order to avoid greater complications, publish without further instructions.—ELGIN.



*Governor MacGregor to Lord Elgin.*

[Telegram.]

(Received 8.15 a.m., September 21, 1907.)

Your telegrams of 14th and 16th September. I have received a minute from my Ministers, of which the principal points are as follows:—

They hope the full minute of 11th September may justify the revocation of the Order in Council; they repeat the objections to the prevention of service of process advanced by the Prime Minister in his letters to your Lordship of the 15th and 17th June, and refer to your letter to the Prime Minister, 18th June, which recognised the cogency of his objections, in consequence of which they cannot understand the action of His Majesty's Government in passing the Order in Council. If it is contended that His Majesty's Government were pledged to renew *modus vivendi*, and that Supreme Court had shown that the *modus vivendi* could not legalize shipment of Newfoundland fishermen, their answer is that *modus vivendi* is not necessary because of the undertaking of this Government to revert to the *status quo* prior to 1905, thus giving to the Americans all the privileges hitherto enjoyed by them on the Treaty Coast.

Promulgation of Order in Council would practically destroy case of this Colony before the Hague Tribunal as furnishing argument that the law of Newfoundland is not binding on Americans. My responsible advisers refuse to accept any responsibility for Order in Council which cannot be with justice put on them. To assist His Majesty's Government ameliorate embarrassing position they proposed reference to Hague Tribunal, and also a temporary working arrangement to lawfully give Americans the privileges they had before this dispute. My responsible advisers cannot be parties to the *modus vivendi*, and they protest against the promulgation of the Order in Council. They are advised by Attorney-General and English Counsel that Order in Council is not operative against the law of the Colony. Order in Council cannot grant any new right or immunity. His Majesty's Government appear to overlook that my responsible advisers undertake to place Americans in precisely the same position as they occupied in 1905, thus making the *modus vivendi* and Order in Council unnecessary. Whether Order in Council is published or revoked, my responsible advisers will issue lawful authority to the local fishermen on the Treaty Coast to sell fish to Americans and others as heretofore, thus removing any possible grounds of complaint so far as Americans are concerned and at the same time upholding the law of this Colony.—*End of résumé.*

In explanation of above, I should add that a licence would be issued to Newfoundland fishermen to sell to Americans or others, but no engaging of Newfoundland fishermen as part of the crews for Americans will be allowed.—MACGREGOR.

*Lord Elgin to Governor MacGregor.*

[Telegram.]

(Sent 11.15 p. m., September 23, 1907.)

Your telegram 20th September.<sup>a</sup> His Majesty's Government have received with great regret the refusal of your Ministers to co-operate in carrying out the *modus vivendi*, which leaves His Majesty's Government no alternative but definitely to instruct you to publish the Order in Council. This step should, therefore, be taken at once.

The points raised by your Ministers will be dealt with by despatch, but I think it right to warn them that His Majesty's Government cannot support them in any attempt to enforce the service of process on American vessels, and that the Senior Naval Officer on the Station has been so instructed.

While taking the necessary steps to promulgate and legalize the *modus vivendi*, you will understand that His Majesty's Government will gladly welcome any friendly arrangement which can be made to facilitate the fishery as between your Government and the American fishermen provided the pledges given by His Majesty's Government to the United States Government are fully safeguarded. Indeed, you may be able to suggest such an arrangement yourself, and your good offices would, no doubt, be greatly appreciated.—ELGIN.

*Lord Elgin to Governor MacGregor.*

DOWNING STREET, September 26, 1907.

SIR: I have the honour to acknowledge the receipt of your telegram of the 20th of September, containing the decision of your Ministers as to the acceptance of the *modus vivendi* with the United States Government regarding the Newfoundland fishery.

2. In my telegrams of the 23rd of September, I informed you that the refusal of your Ministers to accept the *modus vivendi* left His Majesty's Government no option but to instruct you to publish the Order in Council of the 9th of September, and I accordingly instructed you to publish it in the next issue of the Newfoundland "Royal Gazette."

3. His Majesty's Government had no alternative but to take this action in the absence of an undertaking by your Ministers to carry into effect the terms of the *modus vivendi*, and in view of the fact that, as your Ministers were informed in my telegrams of the 30th of August and the 2nd of September, the Government of the United States have declined to accept the proposal of your Government to permit the sale of fish to American fishermen as a substitute for the *modus vivendi*. His Majesty's Government hope, however, that your Ministers may, after all, be able to secure the acceptance of the liberty to purchase fish in substitution for the *modus vivendi* by negotiation with the American fishermen on their arrival in Newfoundland. If this is done, His Majesty's Government will, in

<sup>a</sup> Received 21st September



accordance with the addendum to the *modus vivendi*, have great pleasure in inviting the adherence of the United States Government to the arrangement.

4. I do not think it necessary to comment in detail on the view expressed in your Ministers' Minute since the position of His Majesty's Government in the matter has been so fully set out in my despatch No. 70, of the 19th of September; but as your Premier has referred to my letter to him of the 18th of June, I would remind him that while I consented to omit from the draft note to the Foreign Office any reference to the question of service of process on American vessels, I distinctly intimated that the omission would in no way interfere with the giving of full consideration to any proposal put forward by the United States Government. In view of this fact, and of the distinct intimation given in my telegram of the 10th of August, of the intention of His Majesty's Government to take any necessary action to make good their pledges to the United States Government, I cannot quite understand the surprise expressed by Sir R. Bond at the action now taken.

5. I cannot enter into a discussion as to the validity of His Majesty's Order in Council of the 9th of September, which was issued on the advice of the Law Officers of the Crown, but I cannot for a moment admit that the issue of an Order in Council shows that the law of Newfoundland is not applicable to Americans. On the contrary, the issue of an Order in Council is a formal and deliberate expression of the view of His Majesty's Government that the law of Newfoundland is binding on American vessels, and that no other means exist of preventing the application of such provisions as interfere with the *modus vivendi* than a formal alteration of the Colonial Law by a competent authority, in this case His Majesty in Council under Section 1 of the Imperial Act 59 G. III., ch. 38.

I have, &c.,

ELGIN.

MISCELLANEOUS CORRESPONDENCE, DOCUMENTS,  
ETC.

THE CHARTER OF MASSACHUSETTS BAY—1691.\*

WILLIAM & MARY by the grace of God King and Queene of England Scotland France and Ireland Defenders of the Faith & *To all* to whome these presents shall come Greeting *Whereas* his late Majesty King James the First Our Royall Predecessor by his Letters Patents vnder the Greate Seale of England bearing date at Westminster the Third Day of November in the Eighteenth yeare of his Reigne did Give and Grant vnto the Councill established at Plymouth in the County of Devon for the Planting Ruleing Ordering and Governing of New England in America and to their Successors and Assignes all that part of America lying and being in Breadth from Forty Degrees of Northerly Latitude from the Equinoctiall Line to the Forty Eighth Degree of the said Northerly Latitude Inclusively, and in length of and within all the Breadth aforesaid throughout all the Main Lands from Sea to Sea together alsoe with all the firme Lands Soiles Grounds Havens Ports Rivers Waters Fishings Mines and Mineralls aswell Royal Mines of Gold and Silver as other Mines and Mineralls Pretious Stones Quarries and all and singular other Comodities Jurisdiccions Royalties Priviledges Franchises and Preheminences both within the said Tract of Land vpon the Main and alsoe within the Islands and Seas adjoyning *Provided* alwayes that the said Lands Islands or any the premisses by the said Letters Patents intended or meant to be Granted were not then actually possessed or Inhabited by any other Christian Prince or State or within the bounds Limitts or Territories of the Southern Collony then before granted by the said late King James the First [to be planted †] by divers of his Subjects in the South parts *To Have* and to hold possesse and enjoy all and singular the aforesaid Continent Lands Territories Islands Hereditaments and Precincts Seas Waters Fishings with all and all manner of their Comodities Royalties Liberties Preheminences and Profitts that should from thence forth arise from thence with all and singular their appurtenances and every part and parcell thereof vnto the said Councill and their Successors and Assignes for ever to the sole and proper vse and benefit of the said Councill and their Successors and Assignes for ever *To be* holden of his said late Majestie King James the First his Heires and Successors as of his Mannor of East Greenwich in the County of Kent in free and Comon Socage and not in Capite or by Knights Service *Yielding* and paying therefore to the said late King his Heires and Successors the Fifth part of the Oar of Gold and Silver which should from time to time and at all times then after happen to be found

\* The charter of 1629 had been cancelled by a judgment of the high court of chancery of England June 18, 1684.

† These words occur in the printed copies, but are not in the original.



gotten had and obteyned in att or within any of the said Lands Limitts Territories or Precincts or in or within any part or parcell thereof for or in respect of all and all manner of duties demands and services whatsoever to be done made or paid to the said late King James the first his Heires and Successors (as in and by the said Letters Patents amongst sundry other Clauses Powers Priviledges and Grants therein conteyned more at large appeareth *And Whereas* the said Councill established at Plymouth in the County of Devon for the Planting Ruleing Ordering and Governing of New England in America Did by their Deed Indented vnder their Comon Seale bearing Date the Nineteenth Day of March in the Third Yeare of the Reigne of our Royall Grandfather King Charles the First of ever Blessed Memory Give Grant Bargaine Sell Enffieoffe Alien and Confirme to Sir Henry Roswell Sir John Young Knights Thomas Southcott John Humphreys John Endicot and Simond Whetcomb their Heires and Assines and their Associats for ever All that part of New England in America aforesd which lyes and extends betweene a great River there comonly called Monomack als Merrimack and a certaine other River there called Charles River being in a Bottom of a certaine Bay there comonly called Massachusetts als Mattachusetts als Massatusetts Bay And alsoe all and singular those Lands and Hereditaments whatsoever lying within the space of Three English Miles on the South part of the said Charles River or of any and every part thereof And alsoe all and singular the Lands and Hereditaments whatsoever lying and being within the space of three English Miles to the Southward of the Southermost part of the said Bay called the Massachusetts als Mattachusetts als Massatusetts Bay And alsoe all those Lands and Hereditaments whatsoever which lye and be within the space of three English Miles to the Northward of the said River called Monomack also Merrimack or to the Northward of any and every part thereof And all Lands and Hereditaments whatsoever lying within the Limitts aforesaid North and South in Latitude and in Breadth and in length and longitude of and within all the Breadth aforesaid throughout the Main Lands there from the Atlantick and Western Sea and Ocean on the East parte to the South Sea on the West part and all Lands and Grounds Place and Places Soile Woods and Wood Grounds Havens Ports Rivers Waters Fishings and Hereditaments whatsoever lying within the said Bounds and Limitts and every parte and parcell thereof and alsoe all Islands lying in America aforesaid in the said Seas or either of them on the Western or Eastern Coasts or Parts of the said Tracts of Land by the said Indenture menconed to be Given and Granted Bargained Sold Enffieoffed Aliened and Confirmed or any of them And alsoe all Mines and Mineralls aswell Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and Premisses or any parte thereof and all Jurisdiccons Rights Royalties Liberties Freedoms Imunities Priviledges Franchises Preheminences and Comodities whatsoever which they the said Councill established at Plymouth in the County of Devon for the planting Ruleing Ordering and Governing of New England in America then had or might vse exercise or enjoy in or within the said Lands and Premisses by the same Indenture menconed to be given granted bargained sold enffieoffed and confirmed in or within any part or parcell thereof *To Have* and to hold the said parte of New England in America which lyes and extends and is abuttet as aforesaid and every parte and parcell

thereof And all the said Islands Rivers Ports Havens Waters Fishings Mines Mineralls Jurisdiccions Franchises Royalties Liberties Priviledges Comodities Hereditaments and premisses whatsoever with the appurtenances vnto the said Sir Henry Roswell and Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb their Heires and Assignes and their Associates for ever to the only proper and absolute vse and behoofe of the said Sir Henry Roswell Sir [John\*] Joung Thomas Southcott John Humphryes John Endicott and Simond Whetcomb their Heires and Assignes and their Associates for evermore To be holden of Our said Royall Grandfather King Charles the first his Heires and Successors as of his Mannor of East Greenwich in the County of Kent in free and Comon Soccage and not in Capite nor by Knights Service *Yielding and* paying therefore vnto Our said Royall Grandfather his Heires and Successors the fifth part of the Oar of Gold and Silver which should from time to time and at all times hereafter happen to be found gotten had & obteyned in any of the said Lands within the said Limitts or in or within any part thereof for and in satisfaccon of all manner of duties demands and services whatsoever to be done made or paid to Our said Royall Grandfather his Heires or Successors (as in and by the said recited Indenture may more at large appeare *And Whereas* Our said Royall Grandfather in and by his Letters Patents vnder the Greate Seale of England bearing date at Westminster the Fourth Day of March in the Fourth yeare of his Reigne for the consideracon therein menconed did grant and confirme vnto the said Sir Henry Roswell Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb and to their Associates after named (vizt) Sir Ralph Saltenstall Kn<sup>t</sup> Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Berry Richard Bellingham Nathaniell Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft their Heires and Assignes All the said part of New England in America lying and extending betweene the bounds and limitts in the said Indenture expressed and all Lands and Grounds Place and Places Soiles Woods and Wood Grounds Havens Ports Rivers Waters Mines Mineralls Jurisdiccions Rights Royalties Liberties Freedomes Imunities Priviledges Franchises Preheminences and Hereditaments whatsoever bargained sold enffeooffed and Confirmed or menconed or intended to be given granted bargained sold enffeooffed aliend and confirmed to them the said Sir Henry Roswell Sir John Young Thomas Southcott John Humphreys John Endicott and Simond Whetcomb their Heires and Assignes and to their Associates for ever by the said recited Indentu[r]e *To have* and to hold the said part of New England in America and other the Premisses thereby menconed to be granted and confirmed and every parte and parcell thereof with the appurtenances to the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Increase Nowell Richard Perry Richard Bellingham Nathaniel Wright Samuell Vassall Theophilus

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\* Omitted in the original.



Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft their Heires and Assignes for ever to their own proper and absolute vse and behoofe for evermore *To* be holden of Our said Royall Grandfather his Heires and Successors as of his Mannor of East Greenwich aforesaid in free and comon Soccage and not in Capite nor by Knights Service and alsoe yeilding and paying therefore to Our said Royall Grandfather his Heires and Successors the fifth part only of all the Oar of Gold and Silver which from time to time and at all times after should be there gotten had or obteyned for all Services Exacons and Demands whatsoever according to the tenour and Reservacon in the said recited Indenture expressed *And further* Our said Royall Grandfather by the said Letters Patents did Give and Grant vnto the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Craddock George Harwood Encrease Nowell Richard Perrey Richard Bellingham Nathaniel Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hut[c]hins William Vassall William Pincheon and George Foxcroft their Heires and Assignes All that part of New England in America which lyes and extends betweene a Greate River called Monomack als Merrimack River and a certaine other River there called Charles River being in the Bottom of a certaine Bay there comonly called Massachusetts als Mattachusetts als Massatusetts Bay and alsoe all and singular those Lands and Hereditaments whatsoever lying within the space of Three English Miles on the South part of the said River called Charles River or of any or every part thereof and alsoe all and singuler the Lands and Hereditaments whatsoever lying and being within the space of Three English Miles to the Southward of the Southermost part of the said Bay called Massachusetts als Mattachusetts als Massatusetts Bay And alsoe all those Lands and Hereditaments whatsoever which lye and bee within the space of Three English Miles to the Northward of the said River called Monomack als Merrimack or to the Northward of any and every parte thereof And all Lands and Hereditaments whatsoever lyeing within the limitts aforesaid North and South in Latitude and in Breadth and in length and Longitude of and within all the Breadth aforesaid throughout the Main Lands there from the Atlantick or Western Sea and Ocean on the East parte to the South Sea on the West parte And all Lands Grounds Place and Places Soils Wood and Wood Lands Havens Ports Rivers Waters and Hereditaments whatsoever lying within the said bounds and limitts and every part and parcell thereof And alsoe all Islands in America aforesaid in the said Seas or either of them on the Western or Eastern Coasts or partes of the said Tracts of Lands thereby menconed to be given and granted or any of them And all Mines and Mineralls as well Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and premisses or any parte thereof and free Libertie of Fishing in or within any of the Rivers and Waters within the bounds and limitts aforesaid and the Seas thereunto adjoyning and of all Fishes Royall Fishes Whales Balene Sturgeon and other Fishes of what kind or nature soever that should at any time thereafter be taken in or within the said Seas or Waters or any of them by the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott

John Humphryes John Endicott Simond Whetcomb Isaac Johnson  
 Samuell Aldersey John Ven Mathew Craddock George Harwood  
 Increase Nowell Richard Perrey Richard Bellingham Nathaniel  
 Wright Samuell Vassall Theophilus Eaton Thomas Golfe Thomas  
 Adams John Browne Samuell Browne Thomas Hutchins William  
 Vassall William Pincheon and George Foxcroft their Heires or  
 Assignes or by any other person or persons whatsoever there Inhabit-  
 ing by them or any of them to be appointed to Fish therein *Provided*  
 alwayes that if the said Lands Islands or any the premisses before  
 menconed and by the said Letters Patents last menconed intended  
 and meant to be granted were at the time of granting of the said  
 former Letters Patents dated the third day of November in the Eigh-  
 teenth yeare of the Reigne of his late Majesty King James the First  
 actually possessed or inhabited by any other Christian Prince or State  
 or were within the bounds Limitts or Territories of the said Southern  
 Colony then before granted by the said King to be planted by divers  
 of his Loveing Subjects in the South parts of America That then the  
 said Grant of Our said Royall Grandfather should not extend to any  
 such parts or parcells thereof soe formerly inhabited or lying within  
 the bounds of the Southern Plantacon as aforesaid but as to those  
 parts or parcells soe possessed or inhabited by any such Christian  
 Prince or State or being within the boundaries afororesaid should be  
 vtterly void *To Have* and to hold possesse and enjoy the said parts of  
 New England in America which lye extend and are abutted as  
 aforesaid and every part and parcell thereof and all the Islands  
 Rivers Ports Havens Waters Fishings Fishes Mines Minerals Juris-  
 dicons Franchises Royalties Riverties \* Priviledges Comodities and  
 premisses whatsoever with the Appurtenances vnto the said Sir  
 Henry Roswell Sir John Young Sir Richard Saltenstall Thomas  
 Southcott John Humphreys John Endicott Simond Whetcomb  
 Isaac Johnson Samuell Aldersey John Ven Mathew Craddock  
 George Harwood Increase Nowell Richard Perry Richard Belling-  
 ham Nathaniell Wright Samuell Vassall Theophilus Eaton Thomas  
 Golfe Thomas Adams John Browne Samuell Browne Thomas  
 Hutchins William Vassall William Pincheon and George Fox-  
 croft their Heires and Assignes for ever *To* the only proper and  
 absolute vse and behoofe of the said Sir Henry Roswell Sir John  
 Young Sir Richard Saltenstall Thomas Southcott John Humphryes  
 John Endicott Simond Whetcomb Isaac Johnson Samuell Aldersey  
 John Ven Mathew Craddock George Harwood Increase Nowell  
 Richard Perry Richard Bellingham Nathaniell Wright Samuell  
 Vassall Theophilus Eaton Thomas Golfe Thomas Adams John  
 Browne Samuell Browne Thomas Hutchins William Vassall William  
 Pincheon and George Foxcroft their Heires and Assignes for ever-  
 more *To* be holden of Our said Royall Grandfather his Heires and  
 Successors as of his Mannor of East Greenwich in the County of  
 Kent within the Realme of England in free and Comon Soccage and  
 not in Capite nor by Knights Service And alsoe yielding and paying  
 therefore to Our said Royall Grandfather his Heires and Successors  
 the Fifth part only of all the Oar of Gold and Silver which from  
 time to time and at all times thereafter should be gotten had and  
 obteyned for all services Exacons and demands whatsoever *Provided*  
 alwayes and his Majesties expresse Will and meaning was that only

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\* Liberties.



one Fifth parte of all the Gold and Silver Oar above menconed in the whole and no more should be answered reserved and payable vnto Our said Royall Grandfather his Heires and Successors by colour or vertue of the said last menconed Letters Patents the double reseruations or recitalls aforesaid or any thing therein conteyned notwithstanding And to the end that the affaires and businesse which from time to time should happen and arise concerning the said Lands and the Plantacons of the same might be the better managed and ordered and for the good Government thereof Our said Royall Grandfather King Charles the First did by his said Letters Patents Create and make the said Sir Henry Roswell Sir John Young Sir Richard Saltenstall Thomas Southcott John Humphreys John Endicott Symond Whetcomb Isaac Johnson Samuell Aldersey John Ven Mathew Caddock George Harwood Increase Nowell Richard Perry Richard Bellingham Nathaniell Wright Samuell Vassall and Theophilus Eaton Thomas Golfe Thomas Adams John Browne Samuell Browne Thomas Hutchins William Vassall William Pincheon and George Foxcroft and all such others as should thereafter be admitted and made free of the Company and Society therein after menconed one Body Politique and Corporate in fact and name by the Name of the Governour and Company of the Massachusetts Bay in New England and did grant vnto them and their Successors divers powers Liberties and Priviledges as in and by the said Letters Patents may more fully and at large appeare *And whereas* the said Governour and Company of the Massachusetts Bay in New England by vertue of the said Letters Patents did settle a Collony of the English in the said parts of America and divers good Subjects of this Kingdome encouraged and invited by the said Letters Patents did Transport themselves and their Effects into the same whereby the said Plantacon did become very populous and divers Counties Townes and Places were created erected made setforth or designed within the said parts of America by the said Governour and Company for the time being *And Whereas* in the Terme of the holy Trinity in the Thirty Sixth year of the Reigne of Our dearest Vncle King Charles the Second a Judgment was given in Our Court of Chancery then sitting at Westminster vpon a Writt of Scire Facias brought and prosecuted in the said Court against the Governour and Company of the Massachusetts Bay in New England that the said Letters Patents of Our said Royall Grandfather King Charles the First bearing date at Westminster the Fourth day of March in the Fourth yeare of his Reigne made and granted to the said Governour and Company of the Massachusetts Bay in New England and the Enrollment of the same should be cancelled vacated and annihilated and should be brought into the said Court to be cancelled (as in and by the said Judgment remaining vpon Record in the said Court doth more at large appeare) *And whereas* severall persons employed as Agents in behalfe of Our said Collony of the Massachusetts Bay in New England have made their humble application vnto Vs that Wee would be graciously pleased by Our Royall Charter to Incorporate Our Subjects in Our said Collony and to grant and confirme vnto them such powers priviledges and Franchises as [in] Our Royall Wisdome should be thought most conducing to Our Interest and Service and to the Welfare and happy State of Our Subjects in New England and Wee being graciously pleased to gratifie Our said Subjects And alsoe to the end Our good Subjects within Our Collony of New Plymouth

in New England aforesaid may be brought vnder such a forme of Government as may put them in a better Condicon of defence and considering aswell the granting vnto them as vnto Our Subjects in the said Collony of the Massachusetts Bay Our Royall Charter with reasonable Powers and Priviledges will much tend not only to the safety but to the Flourishing estate of Our Subjects in the said parts of New England and alsoe to the advanceing of the ends for which the said Plantacons were at first encouraged of Our especiall Grace certaine knowledge and meer Mocon have willed and ordeyned and Wee doe by these presents for Vs Our Heires and Successors Will and Ordeyne that the Territories and Collonyes comonly called or known by the Names of the Collony of the Massachusetts Bay and Collony of New Plymouth the Province of Main the Territorie called Accadia or Nova Scotia and all that Tract of Land lying betweene the said Territories of Nova Scotia and the said Province of Main be Erected Vnited and Incorporated And Wee doe by these presents Vnite Erect and Incorporate the same into one reall Province by the Name of Our Province of the Massachusetts Bay in New England And of Our especiall Grace certaine knowledge and meer mocon Wee have given and granted and by these presents for Vs Our Heires and Successors doe give and grant vnto Our good Subjects the Inhabitants of Our said Province or Territory of the Massachusetts Bay and their Successors all that parte of New England in America lying and extending from the greate River comonly called Monomack als Merrimack on the North part and from three Miles Northward of the said River to the Atlantick or Western Sea or Ocean on the South part and all the Lands and Hereditaments whatsoever lying within the limitts aforesaid and extending as farr as the Outermost Points or Promontories of Land called Cape Cod and Cape Mallabar North and South and in Latitude Breadth and in Length and Longitude of and within all the Breadth and Compass aforesaid throughout the Main Land there from the said Atlantick or Western Sea and Ocean on the East parte towards the South Sea or Westward as far as Our Collonyes of Rhode Island Connecticut and the Marragansett \* Countrey all † alsoe all that part or porcon of Main Land beginning at the Entrance of Pescata way Harbour and soe to pass vpp the same into the River of Newickewannock and through the same into the furthest head thereof and from thence Northwestward till One Hundred and Twenty Miles be finished and from Piscata way Harbour mouth aforesaid North-Eastward along the Sea Coast to Sagadehock and from the Period of One Hundred and Twenty Miles aforesaid to crosse over Land to the One Hundred and Twenty Miles before reckoned vp into the Land from Piscataway Harbour through Newickawannock River and alsoe the North halfe of the Isles and Shoals together with the Isles of Cappawock and Nantukett near Cape Cod aforesaid and alsoe [all †] Lands and Hereditaments lying and being in the Countrey and Territory comonly called Accadia or Nova Scotia And all those Lands and Hereditaments lying and extending betweene the said Countrey or Territory of Nova Scotia and the said River of Sagadahock or any part thereof And all Lands Grounds Places Soiles Woods and Wood grounds Havens Ports Rivers Waters and other Hereditaments and premisses whatso-

\* Narragansett.

† In printed copies this is "the," but the omission in the original seems better supplied as above.



ever lying within the said bounds and limitts aforesaid and every part and parcell thereof and alsoe all Islands and Isletts lying within tenn Leagues directly opposite to the Main Land within the said bounds and all Mines and Mineralls aswell Royall Mines of Gold and Silver as other Mines and Mineralls whatsoever in the said Lands and premisses or any parte thereof *To Have* and to hold the said Territories Tracts Countreys Lands Hereditaments and all and singular other the premisses with their and every of their Appurtenances to Our said Subjects the Inhabitants of Our said Province of the Massachusetts Bay in New England and their Successors to their only proper vse and behoofe for evermore *To* be holden of Vs Our Heires and Successors as of Our Mannor of East Greenwich in the County of Kent by Fealty only in free and Comon Soccage *yeilding* and paying therefore yearly to Vs Our Heires and Successors the Fifth part of all Gold and Silver Oar and pretious Stones which shall from time to time and at all times hereafter happen to be found gotten had and obteyned in any of the said Lands and premisses or within any part thereof *Provided* neverthelesse and Wee doe for Vs Our Heires and Successors Grant and ordeyne that all and every such Lands Tenements and Hereditaments and all other estates which any person or persons or Bodyes-Politique or Corporate Townes Villages Colledges or Schooles doe hold and enjoy or ought to hold and enjoy within the bounds aforesaid by or vnder any Grant or estate duely made or granted by any Generall Court formerly held or by vertue of the Letters Patents herein before recited or by any other lawfull Right or Title whatsoever shall be by such person and persons Bodyes Politique and Corporate Townes Villages Colldeges or Schooles their respective Heires Successors and Assignes for ever hereafter held and enjoyed according to the purport and Intent of such respective Grant vnder and Subject neverthelesse to the Rents and Services thereby reserved or made payable any matter or thing whatsoever to the contrary notwithstanding *And Provided* alsoe that nothing herein conteyned shall extend or be vnderstood or taken to impeach or prejudice any right title Interest or demand which Samuall Allen of London Merchant claiming from and vnder John Mason Esqr deceased or any other person or persons hath or have or claimeth to have hold or enjoy of in to or out of any part or parts of the premisses scituate within the limitts above menconed But that the said Samuel Allen and all and every such person and persons may and shall have hold and enjoy the same in such manner (and no other then) as if these presents had not been had or made It being Our further Will and Pleasure that no Grants or Conveyances of any Lands Tenements or Hereditaments to any Townes Colledges Schooles of Learning or to any private person or persons shall be judged or taken to be avoided or prejudiced for or by reason of any want or defect of Form but that the same stand and remaine in force and be mainteyned adjudged and have effect in the same manner as the same should or ought before the time of the said recited Judgment according to the Laws and Rules then and there vsually practised and allowed And Wee doe further for Vs Our Heires and Successors Will Establish and ordeyne that from henceforth for ever there shall be one Governour One Leivtent or Deputy Governour and One Secretary of Our said Province or Territory to be from time to time appointed and commissioned by Vs Our Heires and Successors and

Eight and Twenty Assistants or Councillors to be advising and assisting to the Governour of Our said Province or Territory for the time being as by these presents is hereafter directed and appointed which said Councillors or Assistants are to be Constituted Elected and Chosen in such forme and manner as hereafter in these presents is expressed And for the better Execucon of Our Royall Pleasure and Grant in this behalfe Wee doe by these presents for Vs Our Heires and Successors Nominate Ordeyne make and Constitute Our Trusty and Welbeloved Simon Broadstreet John Richards Nathaniel Saltenstall Wait Winthrop John Phillipps James Russell Samuell Sewall Samuel Appleton Barthilomew Gedney John Hawthorn Elisha Hutchinson Robert Pike Jonathan Curwin John Jolliffe Adam Winthrop Richard Middlecot John Foster Peter Serjeant Joseph Lynd Samuell Hayman Stephen Mason Thomas Hinckley William Bradford John Walley Barnabas Lothrop Job Alcott Samuell Daniell and Silvanus Davis Esquiers the first and present Councillors or Assistants of Our said Province to continue in their said respective Offices or Trusts of Councillors or Assistants vntill the last Wednesday in May which shall be in the yeare of Our Lord One Thousand Six Hundred Ninety and Three and vntill other Councillors or Assistants shall be chosen and appointed in their stead in such manner as in those presents is expressed *And Wee* doe further by these presents Constitute and appoint Our Trusty and welbeloved Isaac Addington Esquier to be Our first and present Secretary of Our said Province during Our Pleasure *And Our Will and Pleasure* is that the Governour of Our said Province from the time being shall have authority from time to time at his discretion to assemble and call together the Councillors or Assistants of Our said Province for the time being and that the said Governour with the said Assistants or Councillors, or Seaven of them at the least shall and may from time to time hold and keep a Council for the ordering and directing the Affaires of Our said Province *And further Wee Will* and by these presents for Vs Our Heires and Successors doe ordeyne and Grant that there shall and may be convened held and kept by the Governour for the time being vpon every last Wednesday in the Moneth of May every yeare for ever and at all such other times as the Governour of Our said Province shall think fitt and appoint a great and Generall Court of Assembly Which said Great and Generall Court of Assembly shall consist of the Governour and Council or Assistants for the time being and of such Freeholders of Our said Province or Territory as shall be from time to time elected or deputed by the Major parte of the Freeholders and other Inhabitants of the respective Townes or Places who shall be present at such Elecons Each of the said Townes and Places being hereby impowered to Elect and Depute Two Persons and noe more to serve for and represent them respectively in the said Great and Generall Court or Assembly To which Great and Generall Court or Assembly to be held as aforesaid Wee doe hereby for Vs Our Heires and Successors give and grant full power and authority from time to time to direct appoint and declare what Number each County Towne and Place shall Elect and Depute to serve for and represent them respectively in the said Great and Generall Court or Assembly *Provided* alwayes that noe Freeholder or other Person shall have a Vote in the Elecon of Members to serve in any Greate and Generall Court or Assembly



to be held as aforesaid who at the time of such Eleccion shall not have an estate of Freehold in Land within Our said Province or Territory to the value of Forty Shillings per Annu at the least or other estate to the value of Forty pounds Sterl' And that every Person who shall be soe elected shall before he sitt or Act in the said Great and Generall Court or Assembly take the Oaths menconed in an Act of Parliament made in the first yeare of Our Reigne Entituled an Act for abrogateing of the Oaths of Allegiance and Supremacy and appointing other Oaths and thereby appointed to be taken instead of the Oaths of Allegiance and Supremacy and shall make Repeat and Subscribe the Declaracon menconed in the said Act before the Governour and Leivten<sup>t</sup> or Deputy Governour or any two of the Assistants for the time being who shall be therevnto authorized and Appointed by Our said Governour and that the Governour for the time being shall have full power and Authority from time to time as he shall Judge necessary to adjourne Prorogue and dissolve all Great and Generall Courts or Assemblies met and convened as aforesaid And Our Will and Pleasure is and Wee doe hereby for Vs Our Heires and Successors Grant Establish and Ordeyne that yearly once in every yeare for ever hereafter the aforesaid Number of Eight and Twenty Councillors or Assistants shall be by the Generall Court or Assembly newly chosen that is to say Eighteen at least of the Inhabitants of or Proprietors of Lands within the Territory formerly called the Collony of the Massachusetts Bay and four at the least of the Inhabitants of or Proprietors of Lands within the Territory formerly called New Plymouth and three at the least of the Inhabitants of or Proprietors of Land within the Territory formerly called the Province of Main and one at the least of the Inhabitants of or Proprietors of Land within the Territory lying between the River of Sagadahoc and Nova Scotia. And that the said Councillors or Assistants or any of them shall or may at any time hereafter be removed or displaced from their respective Places or Trust of Councillors or Assistants by any Great or Generall Court or Assembly And that if any of the said Councillors or Assistants shall happen to dye or be removed as aforesaid before the Generall day of Eleccion That then and in every such Case the Great and Generall Court or Assembly at their first sitting may proceed to a New Eleccion of one or more Councillors or Assistants in the roome or place of such Councillors or Assistants soe dying or removed And Wee doe further Grant and Ordeyne that it shall and may be lawfull for the said Governour with the advice and consent of the Councill or Assistants from time to time to nominate and appoint Judges Commissioners of Oyer and Terminer Sheriffs Provosts Marshalls Justices of the Peace and other Officers to Our Councill and Courts of Justice belonging *Provided* alwayes that noe such Nominacon or Appointment of Officers be made without notice first given or summons yssued out seaven dayes before such Nominacon or Appointment vnto such of the said Councillors or Assistants as shall be at that time residing within Our said Province And Our Will and Pleasure is that the Governour and Leivten<sup>t</sup> or Deputy Governour and Councillors or Assistants for the time being and all other Officers to be appointed or Chosen as aforesaid shall before the Vndertaking the Execucon of their Offices and Places respectively take their severall and respective Oaths for the due and faithfull performance of their duties in

their severall and respective Offices and Places and alsoe the Oaths appointed by the said Act of Parliament made in the first yeare of Our Reigne to be taken instead of the Oaths of Allegiance and Supremacy and shall make repeate and subscribe the Declaracon menconed in the said Act before such Person or Persons as are by these presents herein after appointed (that is to say) The Governour of Our said Province or Territory for the time being shall take the said Oaths and make repeate and subscribe the said Declaracon before the Leivten<sup>t</sup> or Deputy Governour or in his absence before any two or more of the said Persons hereby Nominated and appointed the present Councillors or Assistants of Our said Province or Territory to whom Wee doe by these presents give full power and Authority to give and administer the same to Our said Governour accordingly and after Our said Governour shall be sworn and shall have subscribed the sd Declaracon that then Our Leivten<sup>t</sup> or Deputy Governour for the time being and the Councillors or Assistants before by these presents Nominated and appointed shall take the said Oaths and make repeat and subscribe the said Declaracon before Our said Governour and that every such person or persons as shall (at any time of the Annuall Elecons or otherwise vpon death or removeall) be appointed to be the New Councillors or Assistants and all other Officers to bee hercafter chosen from time to time shall take the Oaths to their respective Offices and places belonging and alsoe the said Oaths appointed by the said Act of Parliament to be taken instead of the Oaths of Allegiance and Supremacy and shall make repeate and subscribe the declaracon menconed in the said Act before the Governour or Leivten<sup>t</sup> or Deputy Governour or any two or more Councillors or Assistants or such other Person or Persons as shall be appointed thereunto by the Governour for the time being to whom Wee doe therefore by these presents give full power and authority from time to time to give and administer the same respectively according to Our true meaning herein before declared without any Comission or further Warrant to bee had and obeyned from vs Our Heires and Successors in that behalfe *And* Our Will and Pleasure is and Wee doe hereby require and Comand that all and every person and persons hereafter by Vs Our Heires and Successors nominated and appointed to the respective Offices of Governour or Leiv<sup>t</sup> or Deputy Governour and Secretary of Our said Province or Territory (which said Governour or Leiv<sup>t</sup> or Deputy Governour and Secretary of Our said Province or Territory for the time being Wee doe hereby reserve full power and Authority to Vs Our Heires and Successors to Nominate and appoint accordingly shall before he or they be admitted to the Execucon of their respective Offices take aswell the Oath for the due and faithfull performance of the said Offices respectively as alsoe the Oaths appointed by the said Act of Parliament made in the First yeare of Our Reigne to be taken instead of the said Oaths of Allegiance and Supremacy and shall alsoe make repeate and subscribe the Declaracon appointed by the said Act in such manner and before such persons as aforesaid *And further* Our Will and Pleasure is and Wee doe hereby for Vs Our Heires and Successors Grant Establish and Ordaine That all and every of the Subjects of Vs Our Heires and Successors which shall goe to and Inhabit within Our said Province and Territory and every of their Children which shall happen to be born there or on the Seas in going thither



or returning from thence shall have and enjoy all Libertyes and Immunities of Fre and naturall Subjects within any of the Dominions of Vs Our Heires and Successors to all Intents Construccions and purposes whatsoever as if they and every of them were borne within this Our *Realme* of England and for the greater Ease and Encouragement of Our Loveing Subjects Inhabiting our said Province or Territory of the Massachusetts Bay and of such as shall come to Inhabit there Wee doe by these presents for vs Our heires and Successors Grant Establish and Ordaine that for ever hereafter there shall be a liberty of Conscience allowed in the Worshipp of God to all Christians (Except Papists) Inhabiting or which shall Inhabit or be Resident within our said Province or Territory *And* Wee doe hereby Grant and Ordaine that the Governor or leivetent or Deputy Gouvernor of our said Province or Territory for the time being or either of them or any two or more of the Councill or Assistants for the time being as shall be thereunto appointed by the said Gouvernor shall and may at all times and from time to time hereafter have full Power and Authority to Administer and give the Oathes appointed by the said Act of Parliament made in the first yeare of Our Reigne to be taken instead of the Oathes of Allegiance and Supremacy to all and every person and persons which are now Inhabiting or resideing within our said Province or Territory or which shall at any time or times hereafter goe or passe thither And Wee doe of our further Grace certaine knowledge and meer mocon Grant Establish and Ordaine for Vs our heires and Successors that the great and Generall Court or Assembly of our said Province or Territory for the time being Convened as aforesaid shall for ever have full Power and Authority to Erect and Constitute Judicatories and Courts of Record or other Courts to be held in the name of Vs Our heires and successors for the Hearing Trying and Determining of all manner of Crimes Offences Pleas Processes Plaints Accons Matters Causes and things whatsoever ariseing or happening within Our said Province or Territory or between persons Inhabiting or resideing there whether the same be Criminall or Civil and whether the said Crimes be Capitall or not Capitall and whether the said Pleas be Reall personall or mixt and for the awarding and makeing out of Execution thereupon To which Courts and Judicatories wee doe hereby for vs our heirs and Successors Give and Grant full power and Authority from time to time to Administer oathes for the better Discovery of Truth in any matter in Controversy or depending before them *And* wee doe for vs Our Heires and Successors Grant Establish and Ordaine that the Gouvernor of our said Province or Territory for the time being with the Councill or Assistants may doe execute or performe all that is necessary for the Probate of Wills and Granting of Administracons for touching and concerning any Interest or Estate which any person or persons shall have within our said Province or Territory *And whereas* Wee judge it necessary that all our Subjects should have liberty to Appeale to vs our heires and Successors in Cases that may deserve the same Wee doe by these presents Ordaine that incase either party shall not rest satisfied with the Judgement or Sentence of any Judicatories or Courts within our said Province or Territory in any Personall Accon wherein the matter in difference doth exceed the value of three hundred Pounds Sterling that then he or they may appeale to vs Our heires and Suc-

cessors in our or their Privy Councill Provided such Appeale be made within Fourteen dayes after y<sup>e</sup> Sentence or Judgment given and that before such Appeale be allowed Security be given by the party or parties appealing in the value of the matter in Difference to pay or Answer the Debt or Damages for the which Judgement or Sentence is given With such Costs and Damages as shall be Awarded by vs Our Heires or Successors incase the Judgement or Sentence be affirmed *And Provided* alsoe that no Execution shall be stayd or suspended by reason of such Appeale vnto vs our Heires and Successors in our or their Privy Councill soe as the party Sueing or takeing out Execution doe in the like manner give Security to the value of the matter in difference to make Restitucion in Case the said Judgement or Sentence be reversed or annul'd vpon the said Appeale *And* we doe further for vs our Heires and Successors Give and Grant to the said Governor and the great and Generall Court or Assembly of our said Province or Territory for the time being full power and Authority from time to time to make ordaine and establish all manner of wholesome and reasonable Orders Laws Statutes and Ordinances Directions and Instructions either with penalties or without (soe as the same be not repugnant or contrary to the Lawes of this our Realme of England) as they shall Judge to be for the good and welfare of our said Province or Territory and for the Gouernment and Ordering thereof and of the People Inhabiting or who shall Inhabit the same and for the necessary support and Defence of the Government thereof *And* wee doe for vs our Heires and Successors Giue and grant that the said Generall Court or Assembly shall have full power and Authority to name and settle annually all Civill Officers within the said Province such Officers Excepted the Election and Constitution of whome wee have by these presents reserved to vs Our Heires and Successors or to the Governor of our said Province for the time being and to Settforth the severall Duties Powers and Lymitts of every such Officer to be appointed by the said Generall Court or Assembly and the formes of such Oathes not repugnant to the Lawes and Statutes of this our Realme of England as shall be respectiuey Administered vnto them for the Execution of their severall Offices and places And alsoe to impose Fines mulcts Imprisonments and other Punishments And to impose and leavy proportionable and reasonable Assessments Rates and Taxes vpon the Estates and Persons of all and every the Proprietors and Inhabitants of our said Province or Territory to be Issued and disposed of by Warrant vnder the hand of the Governor of our said Province for the time being with the advice and Consent of the Councill for Our service in the necessity defence and support of our Government of our said Province or, Territory and the Protection and Preservation of the Inhabitants there according to such Acts as are or shall be in force within our said Province and to dispose of matters and things whereby our Subjects inhabitants of our said Province may be Religiously peaceably and Civilly Governed Protected and Defended soe as their good life and orderly Conversation may win the Indians Natives of the Country to the knowledge and obedience of the onely true God and Saviour of Mankinde and the Christian Faith which his Royall Majestie our Royall Grandfather king Charles the first in his said Letters Patents declared was his Royall Intentions



And the Adventurers free Possession \* to be the Princepall end of the said Plantation And for the better secureing and maintaining Liberty of Conscience here by granted to all persons at any time being and resideing within our said Province or Territory as aforesaid *Willing* Commanding and Requireing and by these presents for vs Our heires and Successors Ordaining and appointing that all such Orders Lawes Statutes and Ordinances Instructions and Directions as shall be soe made and published vnder our Seale of our said Province or Territory shall be Carefully and duely observed kept and performed and put in Execution according to the true intent and meaning of these presents *Provided* alwaies and Wee doe by these presents for vs Our Heires and Successors Establish and Ordaine that in the frameing and passing of all such Orders Laws Satutes and Ordinances and in all Elections and Acts of Government whatsoever to be passed made or done by the said Generall Court or Assembly or in Councill the Governor of our said Province or Territory of the Massachusetts Bay in New England for the time being shall have the Negative voice and that without his consent or Approbation signified and declared in Writeing no such Orders Laws Statutes Ordinances Elections or other Acts of Government whatsoever soe to be made passed or done by the said Generall Assembly or in Councill shall be of any Force effect or validity anything herein contained to the contrary in anywise notwithstanding *And* wee doe for vs Our Heires and Successors Establish and Ordaine that the said Orders Laws Statutes and Ordinances be by the first opportunity after the makeing thereof sent or Transmitted vnto vs Our Heires and Successors vnder the Publique Seale to be appointed by vs for Our or their approbation or Disallowance And that incase all or any of them shall at any time within the space of three yeares next after the same shall have been presented to vs our Heires and Successors in Our or their Privy Councill be disallowed and rejected and soe signified by vs Our Heires and Successors vnder our or their Signe Manuall and Signett or by or in our or their Privy Councill vnto the Governor for the time being then such and soe many of them as shall be soe disallowed and rjected † shall thenceforth cease and determine and become vtterly void and of none effect *Provided* alwaies that incase Wee our Heires or Successors shall not within the Terme of Three Yeares after the presenting of such Orders Lawes Statutes or Ordinances as aforesaid signifie our or their Disallowance of the same Then the said orders Lawes Statutes or Ordinances shall be and continue in full force and effect according to the true Intent and meaning of the same vntill the Expiracon thereof or that the same shall be Repealed by the Generall Assembly of our said province for the time being *Provided* alsoe that it shall and may be Lawfull for the said Governor and Generall Assembly to make or passe any Grant of Lands lying within the Bounds of the Colonys formerly called the Collonys of the Massachusetts Bay and New Plymouth and province of Main in such manner as heretofore they might have done by vertue of any former Charter or Letters Patents which grants of lands within the Bounds aforesaid Wee doe hereby Will and ordaine to be and continue for ever of full force and effect without

\* Profession.

† Rejected.

our further Approbation or Consent *And* soe as Neverthelesse and it is Our Royall Will and Pleasure That noe Grant or Grants of any Lands lying or extending from the River of Sagadehock to the Gulph of St. Lawrence and Canada Rivers and to the Main Sea Northward and Eastward to be made or past by the Governor and Generall Assembly of our said Province be of any force validity or Effect vntill Wee Our Heires and Successors shall have Signified Our or their Approbacon of the same *And* Wee doe by these presents for vs Our Heires and Successors Grant Establish and Ordaine that the Governor of our said Province or Territory for the time being shall have full Power by himselfe or by any Cheif Comander or other Officer or Officers to be appointed by him from time to time to traine instruct Exercise and Governe the Militia there and for the speciall Defence and Safety of Our said Province or Territory to assemble in Martiall Array and put in Warlike posture the Inhabitants of Our said Province or Territory and to lead and Conduct them and with them to Encounter Expulse Repell Resist and pursue by force of Armes aswell by Sea as by Land within or without the limitts of Our said Province or Territory and alsoe to kill slay destroy and Conquer by all fitting wayes Enterprises and meanes whatsoever all and every such Person and Persons as shall at any time hereafter Attempt or Enterprize the destruccon Invasion Detriment or Annoyance of Our said Province or Territory and to vse and exercise the Law Martiall in time of actuall Warr Invasion or Rebellion as occasion shall necessarily require and alsoe from time to time to Erect Forts and to fortifie any place or Places within Our said Province or Territory and the same to furnish with all necessary Amunicon Provisions and Stores of Warr for Offence or Defence and to comitt from time to time the Custody and Government of the same to such Person or Persons as to him shall seem meet And the said Forts and Fortificacons to demolish at his Pleasure and to take and surprise by all waies and meanes whatsoever all and every such Person or Persons with their Shippes Arms Ammunicon and other goods as shall in a hostile manner Invade or attempt the Invading Conquering or Annoying of Our said Province or Territory *Provided* alwayes and Wee doe by these presents for Vs Our Heires and Successors Grant Establish and Ordeyne That the said Governour shall not at any time hereafter by vertue of any power hereby granted or hereafter to be granted to him Transport any of the Inhabitants of Our said Province or Territory or oblige them to march out of the Limitts of the same without their Free and voluntary consent or the Consent of the Great and Generall Court or Assembly of Our said Province or Territory nor grant Comissions for exercising the Law Martiall vpon any the Inhabitants of Our said Province or Territory without the Advice and Consent of the Councill or Assistants of the same *Provided* in like manner and Wee doe by these presents for Vs Our Heires and Successors Constitute and Ordeyne that when and as often as the Governour of Our said Province for the time being shall happen to dye or be displaced by Vs Our Heires or Successors or be absent from his Government That then and in any of the said Cases the Leivtenant or Deputy Governour of Our said Province for the time being shall have full power and authority to doe and execute all and every such Acts Matters and things which Our Governour



of Our said Province for the time being might or could by vertue of these Our Letter Patents lawfully doe or execute if he were personally present vntill the returne of the Governour soe absent or Arivall or Constitucon of such other Governour as shall or may be appointed by Vs Our Heires or Successors in his stead and that when and as often as the Governour and Leivtenant or Deputy Governour of Our said Province or Territory for the time being shall happen to dye or be displaced by Vs Our Heires or Successors or be absent from Our said Province and that there shall be no person within the said Province Comissionated by Vs Our Heires or Successors to be Governour within the same Then and in every of the said cases the Councill or Assistants of Our said Province shall have full power and Authority and Wee doe hereby give and grant vnto the said Councill or Assistants of Our said Province for the time being or the Major parte of them full power and Authority to doe and execute all and every such Acts matters and things which the said Governour or Leivtenant or Deputy Governour of Our said Province or Territory for the time being might or could lawfully doe or exercise if they or either of them were personally present vntill the returne of the Governour Leivtenant or Deputy Governour soe absent or Arrivall or Constitucon of such other Governour or Leivtenant or Deputy Governour as shall or may be appointed by Vs Our Heires or Successors from time to time *Provided* alwaies and it is hereby declared that nothing herein shall extend or be taken to Eerect or grant or allow the Exercise of any Admirall Court Jurisdiction Power or Authority but that the same shall be and is hereby reserved to Vs and Our Successors and shall from time to time be Erected Granted and exercised by vertue of Comissions to be yssued vnder the Great Seale of England or vnder the Seale of the High Admirall or the Comissioners for executing the Office of High Admirall of England *And further* Our expresse Will and Pleasure is and Wee doe by these presents for Vs Our Heires and Successors Ordaine and appoint that these Our Letters Patents shall not in any manner Enure or be taken to abridge bar or hinder any of Our loveing Subjects whatsoever to vse and exercise the Trade of Fishing vpon the Coasts of New England but that they and every of them shall have full and free power and Libertie to continue and vse their said Trade of Fishing vpon the said Coasts in any of the seas therevnto adjoyning or any Arms of the said Seas or Salt Water Rivers where they have been wont to fish and to build and set vpon the Lands within Our said Province or Collony lying wast and not then possesst by particuler Proprietors such Wharfes Stages and Workhouses as shall be necessary for the salting drying keeping and packing of their Fish to be taken or gotten vpon that Coast And to Cutt down and take such Trees and other Naterialls there growing or being or growing vpon any parts or places lying wast and not then in possession of particuler proprietors as shall be needfull for that purpose and for all other necessary easments helps and advantages concerning the Trade of Fishing there in such manner and forme as they have been heretofore at any time accustomed to doe without makeing any Wilfull Wast or Spoile any thing in these presents conteyned to the contrary notwithstanding *And lastly* for the better provideing and furnishing of Masts for Our Royall Navy Wee doe hereby reserve to Vs Our Heires and Successors all Trees of the Diameter of Twenty Four Inches and vpwads

of Twelve Inches from the ground growing vpon any soyle or Tract of Land within Our said Province or Territory not heretofore granted to any private persons And Wee doe restraine and forbid all persons whatsoever from felling cutting or destroying any such Trees without the Royall Lycence of Vs Our Heires and Successors first had and obteyned vpon penalty of Forfeiting One Hundred Pounds Sterling vnto Ous Our Heires and Successors for every such Tree soe felled cutt or destroyed without such Lycence had and obteyned in that behalfe anything in these presents conteyned to the contrary in any wise Notwithstanding. *In Witnesse* whereof Wee have caused these our Letters to be made Patents. *Witnesse* Ourselves att Westmibster the Seaventh Day of October in the Third yeare of Our Reigne

By Writt of Privy Seale

PIGOTT.

*Pro Fine in Hanaperio quadragint Marcas*

J. TREVOR C. S.

W. RAWLINSON C. S.

G. HUTCHINS C. S.\*

EXTRACTS FROM MINUTES OF COLONIAL LEGISLATIVE ASSEMBLIES, MISCELLANEOUS BRITISH-COLONIAL AND OTHER CORRESPONDENCE, REPORTS, ETC.

*Extract from the minutes of the Legislative Assembly of Nova Scotia.*

(WEDNESDAY, 24TH FEBRUARY, 1836)

Mr. Uniacke, from the Joint Committee of the Council and this House, reported an Address to His Majesty, which the Committee had prepared and concurred in, in regard to the encroachments upon the Fisheries, &c.; and he read the same in his place, and afterwards delivered it in at the Clerk's Table, where it was again read, and is as follows:

To the KING'S MOST EXCELLENT MAJESTY.

The Joint Address of Your Majesty's Council and House of Assembly for the Province of Nova-Scotia, now in General Assembly convened.

MAY IT PLEASE YOUR MAJESTY—

We, Your Majesty's Council and House of Assembly, of this Your Majesty's loyal Province of Nova-Scotia, now convened in General Assembly, beg leave most respectfully to submit to the consideration of Your Majesty's Government, the great importance of preserving unimpaired, the Rights and Privileges belonging to Your Majesty's subjects engaged in the Fisheries upon the Coasts of this Province; and also, to prevent Foreigners from interfering or participating in such Rights and Privileges. That, by the Statute of the Imperial

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\* Sir John Trevor, Sir William Rawlinson, and Sir George Hutchins were appointed lords commissioners of the great seal May 15, 1690; and were succeeded by Lord Somers as chancellor May 3, 1693.



Parliament, passed in the 59th year of the Reign of our late Most Gracious Sovereign George the Third, power was given to His Majesty, by and with the advice of His Privy Council, by any order or orders in Council to be from time to time made for that purpose, to make such Regulations and give such Directions, as may be necessary to prevent Fishermen of the United States from taking, drying or curing Fish, in the Bays or Harbors of His Majesty's Dominions in America, or in any other manner whatever abusing the privileges by the Treaty and Act of the Imperial Parliament reserved to them.

That, as no such Order in Council has passed, it may be presumed that it may be extremely difficult for Your Majesty's Council to submit such Order for Your Majesty's consideration, as may be best adapted to meet the exigencies of the case in all Your Majesty's Dominions in America. That your Majesty's subjects in this Province have experienced great inconvenience and loss in this branch of Industry, by Foreign interference—and the Province is injuriously affected by the Illicit Trade carried on by Vessels ostensibly engaged in the Fisheries, who hover on the Coast, and, in many cases, combine Trade with the Fishery—a traffic, prejudicial alike to the Revenue—the importation of British Manufactures—the honest Trader, and the political and moral sentiments, habits and manners, of the people.

To prevent the continuance and extension of such evils, the Legislature of this Your Majesty's loyal Province of Nova-Scotia, have embodied in an Act such Regulations and Restrictions as they conceive will most effectually prevent such interference in the Fishery, and the Illicit Trade connected with it,—and, thereby secure the Rights and Privileges recognized by the Treaty, and intended to be guarded by the Statute. This course has become the more necessary, as the Act of the Imperial Parliament contemplates the further Regulations of the Fisheries by some such means, of which all persons concerned will be bound to take notice. Many of the irregularities complained of may have taken place from the want of such Regulations? There is no intention of intimating that the Government of the United States approves of, or sanctions, any interference with a branch of the Fishery which they have expressly relinquished.

We, therefore, most earnestly and respectfully pray that Your Majesty will be pleased to give Your Royal Assent to the said Act; and, by an Order of Your Majesty', in Council, declare the said Act to contain the Rules, Regulations and Restrictions, respecting the Fisheries for the Coasts, Bays, Creeks and Harbors of Nova-Scotia.

Resolved, That the said Address be received and adopted by this House.

Resolved, That the Council be desired to join by Committee, with the Committee of this House, who reported the foregoing Address, in preparing and presenting to His Excellency the Lieutenant-Governor an Address, praying him to forward the foregoing Address to His Majesty, with his favourable recommendation of the prayer thereof.

Ordered, That the Clerk do acquaint the Council with the above Resolution.

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(MONDAY, 29th February, 1836)

A Message from the Council, by Mr. Haliburton:

MR. SPEAKER, \* \* \*

The Council have appointed Mr. Cogswell, Mr. Tobin and Mr. Allison, a Committee for the purpose of joining a Committee of this Honorable House, in preparing an Address to His Excellency the Lieutenant-Governor, praying His Excellency to forward the joint Address of the Council and House of Assembly to His Majesty, on the subject of the Bill, entitled "An Act relating to the Fisheries and for the prevention of Illicit Trade in the Province of Nova-Scotia and the Coasts and Harbors thereof," together with His Excellency's favorable recommendation thereof, as desired by this Honorable House.

And then the Messenger withdrew.

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(SATURDAY, 12th March, 1836.)

Mr. Uniacke, from the Joint Committees of the Council and this House, appointed to prepare an Address to His Excellency the Lieutenant-Governor, on the subject of the Act relating to the Fisheries, and the Address to His Majesty in relation thereto, reported, that the Committee had prepared an Address accordingly; and he read the same in his place, and afterwards delivered it in at the Clerk's Table, where it was again read, and is follows:—

To His Excellency Major-General, SIR COLIN-CAMPBELL.

*Knight Commander of the Most Honorable Military Order of the Bath, Lieutenant-Governor, and Commander in Chief, in and over His Majesty's Province of Nova-Scotia, and its Dependencies, &c., &c., &c.*

The Address of His Majesty's Council and House of Assembly of the Province of Nova-Scotia, in Legislature Assembled.

MAY IT PLEASE YOUR EXCELLENCY—

The Provincial Legislature have passed an Act in the present Session, entitled, "An Act relating to the Fisheries, and for the prevention of Illicit Trade, in the Province of Nova-Scotia, and the Coasts and Harbors thereof," to which your Excellency has been pleased to give Your Assent. That as this Act is of more than usual importance, as respects the rights and interests of His Majesty's Subjects, and the protection of the Laws and Trade of this Province, both branches of the Provincial Legislature, have united in an address to our Most Gracious Sovereign, praying that His Majesty will be most graciously pleased to give His Royal Assent to the said Act, and, by an order in Council, declare the same to contain the Rules, Regulations and Restrictions, under which the Fishery shall be conducted; and we respectfully request that Your Excellency will be pleased to transmit the said Act and Address, with Your Excellency's strongest recommendation for His Majesty's Royal Approbation.

Resolved, That the said Address be received and adopted by this House.

Ordered, That the Committee of this House who joined in preparing said Address, do join the Committee of the Council, to wait upon



His Excellency the Lieutenant-Governor with the said Address, and the Address to His Majesty therein referred to.

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*Extracts from the journal of the legislative assembly of Nova Scotia, 1843.*

*Lord Russell to Lord Falkland.*

DOWNING STREET, 9th April, 1841.

MY LORD: I have the honor to transmit, herewith, to your Lordship, the copy of a letter from the Under Secretary of State for Foreign Affairs, enclosing the copy of a note from the Minister at this Court from the United States of America, complaining of the proceedings of the Provincial authorities of Nova Scotia towards the vessels and citizens of that Republic, engaged in fishing on the coasts of that Province.

I have to request that you will make immediate enquiry into the allegations contained in Mr. Stevenson's note, and that you will furnish me with a detailed report on the subject, for the information of Her Majesty's Government.

I have, etc.,

(Signed) J. RUSSELL.

The Right Honorable VISCOUNT FALKLAND, etc., etc.

[Inclosure.]

*Under Secretary of State to Mr. Stephen.*

FOREIGN OFFICE, 2nd April, 1841.

SIR: I am directed by Viscount Palmerston to transmit to you, herewith, for the consideration of Lord John Russell, a copy of a note from Mr. Stevenson, Minister from the United States of America, relative to certain proceedings of the Colonial authorities of Nova Scotia towards the vessels and citizens of the United States, engaged in fishing on the neighboring Coasts of Nova Scotia.

I have, etc.

(Signed) LEVESON.

JAMES STEPHEN, Esq., etc.

(Inclosing copy of letter, Mr. Stevenson to Lord Palmerston, March 27, 1841.)

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*Lord Falkland to Lord Russell.*

GOVERNMENT HOUSE,  
Halifax, 28th April, 1841.

MY LORD: I transmit a copy of a report of a Committee on the Fisheries of Nova Scotia, which report has been adopted by the House of Assembly, and to which I have been requested to call your Lordship's attention.

The greatest anxiety is felt by the inhabitants of this Province that the convention with the Americans, signed at London on the 20th October, 1818, should be strictly enforced; and it is hoped that the

consideration of the Report may induce your Lordship to exert your influence in such a manner as to lead to the augmentation of the force (a single vessel) now engaged in protecting the Fisheries on the Banks of Newfoundland, and the south shore of Labrador, and the employment in addition of one or two steamers for that purpose.

The people of this Colony have not been wanting in efforts to repress the incursions of the natives of the United States upon their fishing grounds, but have fitted out with good effect some small armed vessels, adapted to follow trespassers into shoal water or chase them on the seas (and the expediency of this measure has been corroborated by the testimony of Capt. Milne, R. N., in his Report of the Fisheries of Newfoundland,) but finding their own means inadequate to the suppression of this evil, the Nova Scotians earnestly entreat the further intervention and protection of the mother country.

I have the honor to forward herewith, in accordance with a request made to me in the same Resolutions, a case stated (raising the necessary questions as to the right of Fishery which the people of these colonies possess) for the purpose of being referred to the Crown Officers in England, in order that the existing Treaties and the rights of these North American Provinces under them may be more strictly defined.

I shall feel obliged by your Lordship's allowing the opinion of the Crown Officers to be taken on the said case, and I am authorized by the House of Assembly here to defray any expense that may be incurred in obtaining such opinion.

I have, etc.,

(Signed) FALKLAND.

The LORD JOHN RUSSELL, etc., etc.

[Inclosure.]

Case stated by the Right Honorable Lord Viscount Falkland, Lieutenant Governor of Nova Scotia, at the request of the House of Assembly of that Province, for the purpose of obtaining the opinion of the law officers of the Crown in England.

At the Peace of 1783, a Treaty was entered into between the United States of America and Great Britain, by which the people of the former country obtained the right "To take fish on the Grand Bank and all other Banks of Newfoundland, in the Gulf of Saint Lawrence, and all other places in the sea where the inhabitants of both countries had been used to fish before, and the liberty to fish on such parts of the coast of Newfoundland as British Fishmen used, but not to dry or cure fish there, and on the coasts, bays and creeks of all other British Dominions in America." They also obtained liberty to dry and cure fish in any of the unsettled Bays, Harbors, and Creeks of Nova Scotia, Magdalen Islands and Labrador, but as soon as any of them were settled this liberty was to cease, unless continued by agreement with the inhabitants.

The United States declared War against Great Britain in 1812; peace was subsequently proclaimed, and a convention was entered into between the two countries, and signed at London, October 20th, 1818, the first article of which is as follows—

"Whereas differences have arisen respecting the liberty claimed by the United States for the Inhabitants thereof to take, dry and cure fish on certain coasts, bays, harbors and creeks of His Britannic



Majesty's Dominions in America, it is agreed between the high contracting parties that the Inhabitants of the said United States shall have for ever, in common with the subjects of His Britannic Majesty, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau Islands on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon Islands, on the shores of the Magdalen Islands, and also on the coasts, bays, harbors and creeks, from Mount Joly on the southern coasts of Labrador, to and through the straits of Bellisle, and thence northwardly indefinitely along the coast, without prejudice, however, to any of the exclusive rights of the Hudson's Bay Company, and that the American Fishermen shall also have liberty for ever to dry and cure fish in any of the unsettled bays, harbors and creeks of the southern part of the coasts of Newfoundland hereabove described, and of the coast of Labrador; but so soon as the same or any portion thereof shall be settled, it shall not be lawful for the said Fishermen to dry or cure fish on or within at such portion so settled, without previous agreement for such purpose with the inhabitants, proprietors or possessors of the ground. And the United States hereby renounce for ever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the coasts, bays, creeks, or harbors of His Majesty's Dominions in America, not included within the above mentioned limits—provided, however, that the American Fishermen shall be admitted to enter such bays or harbors for the purpose of shelter and of repairing damages therein, of purchasing wood, and obtaining water, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing Fish therein, or in any other manner abusing the privileges hereby reserved to them."

An Act passed in the 59th year of the reign of His late Majesty George 3, chap. 38, entitled, An Act to enable His Majesty to make regulations with respect to the taking and curing Fish on certain parts of the coasts of Newfoundland and Labrador, and His Majesty's other possessions in North America, according to a Convention made between His Majesty and the United States of America. And in the year 1836, His late Majesty William the Fourth, in the 6th year of His Reign, by an order in Council, assented to, and made the clauses of a certain Act of the Assembly of Nova Scotia, the Rules, Regulations, and restrictions respecting the Fisheries, on the coasts, bays, etc. of that Province, by the first section of which, it is enacted, that any ship, vessel or boat, which shall be foreign, and not navigated according to the laws of Great Britain and Ireland, which shall have been found fishing, or preparing to fish, or to have been fishing, within three marine miles of the coasts, bays, creeks, or harbors of this Province, such ship, vessel or boat, and their respective cargoes shall be forfeited. Nova Scotia is indented with Bays, many of which reach from 60 to 100 miles into the interior, such as the Bay of Fundy, St. Mary's Bay, the Bras d'Or Lake, and Manchester Bay; the land on the shores is entirely British territory, and Nova Scotia proper is separated from the Island of Cape Breton by a narrow strait called the Gut of Canso, in some parts not wider than three quarters of a mile. In the Bay of Fundy, St. Mary's Bay, and the

Gut of Canso, Americans conduct the Fishery, and their Fishing vessels pass also through the latter, or anchor there, and not only fish, but by using bait, toll the mackerel into deep waters, thereby injuring the profitable Seine Fisheries of Fox Island and Crow Harbor, Arichat, St. Peter's Bay and other stations in the neighborhood of Canso which formerly were the most productive Fisheries of Nova Scotia. They also land on the Magdalen Islands, set nets and sweep seines in the spring of the year, at a time when the Herrings resort to those waters to spawn, thereby destroying the spawn and young fish, and consequently ruining the Fishery.

The opinion of the Law Officers of the Crown in England is requested on the following points.

1st.—Whether the Treaty of 1783 was annulled by the War of 1812, and whether citizens of the United States possess any right of Fishery in the waters of the Lower Provinces other than ceded to them by the convention of 1818, and if so, what right. 2d.—Have American citizens the right under that Convention, to enter any of the Bays of this Province to take Fish; if after they have so entered they prosecute the Fishery more than three marine miles from the shores of such Bays; or should the prescribed distance of three marine miles be measured from the headlands, at the entrance of such Bays, so as to exclude them. 3d.—If the distance of three marine miles is to be computed from the indents of the coast of British America, or from the extreme headlands, and what is to be considered a headland. 4th.—Have American vessels, fitted out for a Fishery, a right to pass through the Gut of Canso, which they cannot do without coming within the prescribed limits, or to anchor there or to Fish there; and is casting bait to lure fish in the track of the vessel fishing, within the meaning of the Convention. 5th.—Have American citizens a right to land on the Magdalen Islands, and conduct the Fishery from the shores thereof by using nets and seines; or what right of Fishery do they possess on the shores of those Islands and what is meant by the term shore. 6th.—Have American Fishermen the right to enter the Bays and Harbors of this Province for the purpose of purchasing wood or obtaining water, having provided neither of these articles at the commencement of their voyages, in their own countries; or have they the right of entering such Bays and Harbors in cases of distress, or to purchase wood and obtain water, after the usual stock of those articles for the voyage of such Fishing craft has been exhausted or destroyed. 7th.—Under existing Treaties, what rights of Fishery are ceded to the citizens of the United States of America, and what reserved for the exclusive enjoyment of British subjects.

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*Lord Stanley to Lord Falkland.*

DOWNING STREET, 28th November, 1842.

MY LORD: I have the honor to acknowledge the receipt of your Lordship's Despatch of the 11th July last, enclosing copies of two reports made by Committees of the House of Assembly of Nova Scotia, complaining of the encroachments of American citizens on the Fisheries of British North America, and praying the establish-



ment of a general code of regulations for their protection—together with a copy of a case prepared by you in April, 1841, to be submitted to Her Majesty's Law Officers, raising certain questions, as to the rights of Fishery conferred by the Treaties on the subject, on British and American Fishermen respectively. I enclose for your information a copy of the Report, which on the 30th August was received from the Queen's Advocate and Her Majesty's Attorney General, on the case drawn up by Your Lordship; since that date the subject has frequently engaged the attention of myself and my colleagues, with the view of adopting further measures if necessary, for the protection of British interest in accordance with the law as laid down in the enclosed Report. We have, however, on full consideration come to the conclusion, as regards the Fisheries of Nova Scotia, that the precautions taken by the Provincial Legislature appear adequate to the purpose, and that being now practically acquiesced in by the Americans, no further measures are required.

I have, etc.

(Signed) STANLEY.

The Right Honorable VISCOUNT FALKLAND, etc., etc.

[Inclosure.]

*Opinion of Law Officers of the Crown.*

DOCTORS COMMONS, *August 30th, 1841.*

MY LORD: We are honored with your Lordship's commands, signified in Mr. Backhouse's Letter of the 26th of May, stating that he was directed to transmit to us the accompanying letter from the Colonial Office, enclosing a copy of a despatch from the Lieutenant Governor of Nova Scotia, together with an address to Her Majesty from the House of Assembly of that Province, complaining of the continued encroachments of American Fishermen on the Fishing ground of Nova Scotia and the adjacent Colonies, and praying that Her Majesty would establish by an order in Council, general regulations for the protection of the Fisheries, according to the code annexed to the address.

We are also honored with Mr. Backhouse's letter of the 8th June, stating that he was directed to transmit to us the copy of a Letter from the Colonial Office, together with a copy of a despatch from the Lieutenant Governor of Nova Scotia, enclosing a case for opinion as to what rights have been ceded to the citizens of the United States of America, and as to what rights have been exclusively reserved to Her Majesty's subjects, and to request that we would take the papers into consideration, and report to your Lordship our opinion upon the several questions stated in the case above mentioned.

Query 1st.—In obedience to your Lordship's commands, we have taken these papers into consideration, and have the honor to report, that we are of opinion, that the Treaty of 1783 was annulled by the war of 1812; and we are also of opinion, that the rights of Fishery of the citizens of the United States must now be considered as defined and regulated by the Convention of 1818; and with respect to the general question, "if so, what right", we can only refer to the terms of the convention, as explained and elucidated by the observations which will occur in answering the other specific queries.

2d. Except within certain defined limits to which the query put to us does not apply, we are of opinion that by the terms of the Treaty, American citizens are excluded from the right of fishing within three miles of the Coast of British America, and that the prescribed distance of three miles is to be measured from the headlands or extreme points of land next the sea of the coast, or of the entrance of the Bays, and not from the interior of such Bays or Indents of the coast, and consequently that no right exists on the part of American citizens to enter the Bays of Nova Scotia there to take fish, although the fishing being within the Bay may be at a greater distance than three miles from the shore of the Bay, as we are of opinion the term headland is used in the Treaty to express the part of land we have before mentioned, excluding the interior of the Bays and the indents of the coast.

4th. By the treaty of 1818 it is agreed that American citizens should have the liberty of fishing in the Gulf of St. Lawrence, within certain defined limits, in common with British subjects; and such treaty does not contain any words negating the right to navigate the passage or Gut of Canso, and therefore it may be conceded that such right of navigation is not taken away by that Convention; but we have now attentively considered the course of navigation to the Gulf, by Cape Breton, and likewise the capacity and situation of the passage of Canso, and of the British Dominions on either side, and we are of opinion that, independently of Treaty, no Foreign country has the right to use or navigate the passage of Canso; and attending to the terms of the convention relating to the liberty of Fishery to be enjoyed by the Americans, we are also of opinion that that convention did not either expressly or by implication, concede any such right of using or navigating the passage in question. We are also of opinion that casting bait to lure Fish in the track of any American vessels navigating the passage, would constitute a fishing within the negative terms of the convention.

5th. With reference to the claim of a right to land on the Magdalen Islands, and to fish from the shores thereof, it must be observed, that by the Treaty, the liberty of drying and curing Fish (purposes which could only be accomplished by landing) in any of the unsettled Bays, etc. of southern part of Newfoundland, and of the coast of Labrador is specifically provided for; but such liberty is distinctly negatized in any settled Bay, etc., and it must therefore be inferred, that if the liberty of landing on the shores of the Magdalen Islands had been intended to be conceded, such an important concession would have been the subject of express stipulation, and would necessarily have been accompanied with a description of the inland extent of the shore over which such liberty was to be exercised, and whether in settled or unsettled parts, but neither of these important particulars are provided for, even by implication, and that, among other considerations leads us to the conclusion that American citizens have no right to land or conduct the Fishery from the shores of the Magdalen Islands. The word "shore" does not appear to be used in the Convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would therefore comprise the land covered with water, as far as could be available for the due enjoyment of the liberty granted.



6th. By the Convention, the liberty of entering the Bays and Harbors of Nova Scotia for the purpose of purchasing wood and obtaining water, is conceded in general terms, unrestricted by any condition expressed or implied, limiting it to vessels duly provided at the commencement of the voyage; and we are of opinion that no such condition can be attached to the enjoyment of the liberty.

7th. The rights of Fishery ceded to the citizens of the United States and those reserved for the exclusive enjoyment of British subjects, depend altogether upon the Convention of 1818, the only existing Treaty on this subject between the two countries, and the material points arising thereon have been specifically answered in our replies to the preceding Queries.

We have, etc.,

(Signed)

J. DODSON,  
THOS. WILDE.

VISCOUNT PALMERSTON, K. B., etc., etc.

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*Mr. Crampton to Mr. Clayton.*

WASHINGTON, *March 22, 1849.*

SIR: On the 12th of May, 1846, an address was voted by the Canadian Parliament to her Majesty the Queen, praying that, in the event of a change being made in the law regulating the admission of foreign grain into the British markets, due regard should be had to the interests of Canada; and, as a measure which would be greatly conducive to this object, her Majesty was respectfully requested to cause the necessary steps to be taken for opening a negotiation with the government of the United States for the admission of the products of Canada into their ports on the same terms that theirs are admitted into the ports of Great Britain and that colony.

To this request her Majesty was pleased to accede, and the governor general of Canada was accordingly instructed by her Majesty's principal secretary of state for the colonies, in a despatch dated June 3, 1846, to assure the legislative assembly that her Majesty would readily cause directions to be given to her Majesty's minister at Washington to avail himself of the earliest suitable opportunity to press the important subject of the establishment of an equality of trade between the dominions of the republic and British North America on the notice of the United States government; and that "it would afford her Majesty the most sincere satisfaction if any communication which might hereafter be held for this purpose should have the effect which is desired by her faithful commons of Canada."

An instruction to this effect was, in consequence, immediately addressed by her Majesty's government to Mr. Pakenham, her Majesty's minister at Washington, directing him to bring this subject under the serious consideration of the government of the United States, whenever he might consider the time to be favorable for pressing on their attention a subject believed by her Majesty's government to be of deep interest and importance both to Canada and the United States.

As an important measure of a general nature in relation to the tariff was pending in the Congress of the United States at the time

Mr. Pakenham received the above instruction, he availed himself of the discretion which it allowed to him as to the time of acting upon it to defer bringing forward the proposition of her Majesty's government until the result of the deliberations of the United States legislature on the question of the tariff should be known.

In the month of December, 1846, accordingly, he made a communication on the subject to the United States Secretary of the Treasury, who immediately submitted the matter to the consideration of the government. In the early part of 1848, I had myself the honor of communicating with Mr. Walker upon the subject, and I learned with satisfaction that the views of the United States government were highly favorable to the principle of a reciprocal relaxation of commercial restrictions between Canada and the United States. As the speediest way of bringing about so desirable an object, it was, upon consultation, judged most expedient to introduce into Congress a bill by which the duties on certain agricultural and natural products imported into the United States from Canada should be abolished, conditionally, under the understanding that a bill exactly similar in its provisions should be introduced into the Canadian Parliament respecting the like agricultural and natural productions imported into that province from the United States.

This bill was accordingly drawn up by a distinguished member of the Committee on Commerce of the House of Representatives—Mr. Grinnell—and its adoption very strongly recommended by the Secretary of the Treasury, in a letter to that committee, dated 1st of May, 1848. The bill was passed without opposition by the House of Representatives, during the first session of the last Congress; but was, from the great pressure of other business, not voted upon during that session by the Senate; and, during the session of the same Congress lately brought to a close, has, from the same cause, I regret to observe, been lost in that body.

I have thus at some length recounted the steps which have been hitherto taken in this matter by her Majesty's legation, in order to place in a clearer light my motives for taking this early opportunity of again submitting this important question to the serious consideration of the United States government.

The proceedings of Congress in this matter have been watched with anxiety by the provincial government and the people of Canada, and a great deal of disappointment has, I am assured, been felt in that province on their being apprized that the act for a reciprocity of trade has, from whatever cause, failed to become law. I cannot, therefore, but feel anxious to assure her Majesty's government that the disposition of the government of the United States to meet the proposed measure of commercial relaxation in a spirit of liberal reciprocity remains unchanged.

The Canadian legislature are not, indeed, without reasonable grounds for expecting to be met in such a spirit by the United States; for confidently relying upon the proofs so frequently given by the United States government that a just reciprocity is the guiding principle of their policy in commercial arrangements with other nations, the Canadian Parliament have already, on their side, and without stipulating for any equivalent, made very important advances towards a more liberal system of commercial intercourse. I allude to the act of the Provincial Parliament of 1847, by which, immedi-



ately availing themselves of the power conferred upon them by the imperial government (by the act of the British Parliament called the "British possessions act") to regulate duties on the products both of foreign nations and of the mother country, the duties on American manufactures were lowered from  $12\frac{1}{2}$  to  $7\frac{1}{2}$  per cent., while those on British manufactures were raised from 5 to  $7\frac{1}{2}$  per cent., thus placing the United States entirely upon a par with the mother country in this important particular.

That the feeling of disappointment to which I have alluded, and the impression that there is now no hope of placing their commercial relations with the United States on a more satisfactory and mutually advantageous footing, should have the effect of causing the Canadian legislature to retrace their steps in the liberal course which they evidently wish to pursue with regard to the commercial relations of the province with the United States, would assuredly be a subject of great regret to her Majesty's government. It could not, therefore, but be satisfactory for them to learn that the favorable consideration of the government of the United States will now be given to this subject, with a view to the negotiation of such a treaty as would secure the proposed objects, should that appear to be a course likely to insure their speedy attainment.

I am the more desirous at the present moment of ascertaining the disposition of the United States government with regard to this matter, from having lately received an instruction from her Majesty's Government directing me, with the concurrence of the lieutenant governor of New Brunswick, to negotiate with the government of the United States a convention, upon the principle of reciprocity, extending to that province also advantages similar to those proposed by the contemplated measure as regards Canada; and I am, consequently, already in communication with his Excellency Sir Edmund Head upon this subject.

It is, of course, on grounds of the interest of Canada and New Brunswick that her Majesty's government urge this measure. It is both the duty of her Majesty's government to look to those interests in the first place, and it would also be absurd to pretend that that consideration is not their governing motive. But there can be little doubt that the measure of relaxation desired by the British North American colonies on their own account would be almost, if not quite, equally advantageous to the United States, as establishing a free and unrestricted intercourse between them and the countries in question, and thereby affording a much more extended demand for United States produce than the Canadas or New Brunswick, in their present restricted power of mutual exchange, are enabled to sustain.

I am unwilling, on the present occasion, to enter into unnecessary detail; but I think that I can confidently appeal to the custom-house reports, both of the United States and Canada, to show that the exports from the United States to Canada already much exceed the imports from that province, leaving a heavy balance of trade against the latter—a state of things which, if not remedied, must clearly tend to diminish, and not to increase, the profitable commercial transactions between the two countries. That a more extended use of the canals of the United States by the Canadian dealer in grain would take place on the removal of the present inconvenient custom-house formalities, cannot, I believe, be doubted. That the present state of the respective

tariffs is one which raises very vexatious and harassing impediments to the local trade in agricultural produce along a very extended frontier, and encourages the demoralizing practice of smuggling, is not to be denied; and that the removal of such restrictions would tend to promote a friendly feeling between the inhabitants of the respective frontiers—and this is an object, it is not doubted, very desirable to both governments—cannot reasonably be questioned.

Without, therefore, adverting to other measures of great importance to the trade and navigation of both countries, which, should the present proposition meet with the concurrence of the United States government, it is confidently expected may be brought to bear, I venture to submit the above statement to the just and favorable consideration of the government of the United States.

I avail myself of this opportunity to renew to you, sir, the assurance of my highest consideration.

JOHN F. CRAMPTON.

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*Sir H. L. Bulwer to Mr. Webster.*

BRITISH LEGATION,  
June 24, 1851.

SIR: I have already expressed to you at different periods, and especially in my note of 22d March last, the disappointment which was experienced in Canada, when at the close of last session of Congress it was known that no progress whatever had been made in the bill which had been brought forward for three years successively for reciprocating to the measure which passed the Canadian legislature in 1847, and which granted to the natural produce of this country an entry free of duty into Canada whensoever the Federal Legislature of the United States should pass a measure similarly admitting into the United States the natural produce of the Canadas. This disappointment was the greater, inasmuch as the Canadian government has always adopted the most liberal commercial policy with respect to the United States, as well in regard to the transit through its canals, as in regard to the admission of manufactured goods coming from this country.

I have now the honor to enclose to you the copy of an official communication which I have received from the governor-general, Lord Elgin, by which you will perceive that unless I can hold out some hopes that a policy will be adopted in the United States similar to that which has been adopted in Canada, and which the Canadian authorities would be willing, if met in a corresponding spirit, to carry out still farther, the Canadian government and legislature are likely forthwith to take certain measures, which, both in themselves and their consequences, will effect a considerable change in the commercial intercourse between the Canadas and the United States.

I should see with great regret the adoption of such measures, and I am induced to hope, from the conversations I have recently had with you, that they will be unnecessary.

The wish of her Majesty's government indeed would be rather to improve than impair all relations of friendship and good neighborhood between her Majesty's American possessions and the United States; and I feel myself authorized to repeat to you now, what I



have at different times already stated to Mr. Clayton and yourself, viz.: that her Majesty's government would see with pleasure any arrangement, either by treaty or by legislation, establishing a free interchange of all natural productions not only between Canada and the United States, but between the United States and all her Majesty's North American provinces; and furthermore, I am willing to say that in the event of such an arrangement, her Majesty's government would be ready to open to American shipping the waters of the river St. Lawrence with the canals adjoining, according to the terms of a letter which I addressed to Mr. Clayton on 27th March, 1850, for the information of the Committee on Commerce in the House of Representatives, and to which I take the liberty of referring you, whilst I may add that her Majesty's government would in this case be likewise willing to open to American fishermen the fisheries along the coast of Nova Scotia and New Brunswick, according to the conditions specified in the enclosed extract from instructions with which I am furnished.

The willingness to grant to American citizens on such reasonable conditions two important privileges so long enjoyed exclusively by the subjects of Great Britain, will testify clearly to the spirit by which the British government is on this occasion animated; and as affairs have now arrived at that crisis in which a frank explanation of the views of either party is necessary for the interests and right understanding of both, I take the liberty of begging you to inform me whether you are disposed, on the part of the United States, to enter into such a convention as will place the commercial relations between the United States and her Majesty's North American colonies on the footing which I have here proposed; or whether, in the event of there appearing to you any objection to proceed by convention in this matter, you can assure me that the United States government will take the earliest opportunity of urgently recommending Congress to carry out the object aforesaid by the means of legislation.

I avail myself of this opportunity to renew to you the assurance of my highest consideration.

H. L. BULWER.

HON. DANIEL WEBSTER, &c., &c., &c.

[Inclosure.]

*Lord Elgin and Kincardine to Sir H. L. Bulwer.*

GOVERNMENT HOUSE,  
Toronto, June 7, 1851.

SIR: I have the honor to transmit for your excellency's information the copy of a memorandum and accompanying documents, which has been submitted to me by the Honorable Mr. Hincks, inspector-general of public accounts in this province, on the subject of the closing of the Canadian canals to foreign vessels. You are, I believe, aware that a measure, such as that recommended by Mr. Hincks, has been for some time contemplated by the Canadian Government.

I have been most unwilling to have recourse to it, more particularly after the representations made by the gentlemen from Oswego, who visited this city some time ago.

The discussion which took place in the legislative assembly last evening, to which Mr. Hincks refers in his memorandum, indicates,

however, very clearly, the direction which public opinion is taking on these questions, and I cannot conceal from your excellency my belief that, unless you are enabled to give me some assurance that negotiations with the government of the United States are in progress, which are likely to result in placing the commercial relations between the provinces and the United States on a more satisfactory footing, it will not be in my power any longer to refrain from adopting the steps which the inspector-general suggests, and which may, I think, very probably be followed up by others calculated to check the trade between British North America and the United States.

Under these circumstances, I deem it my duty to invite your excellency's attention to the documents which I herewith enclose, and to request you will, at your earliest convenience, furnish me, for my guidance, with such information respecting the views of the government of the United States as it may be in your power to give.

I have, &c.,

ELGIN AND KINCARDINE.

The Rt. Hon. Sir HENRY L. BULWER, G. C. B., &c., &c., &c.

[Annex 1 to foregoing.]

The papers alluded to in this despatch, are:

1st. Memorandum from Mr. Hincks to the Governor-General of Canada, recommending that the canals should be closed to foreign shipping, in regard to which no immediate steps were taken in consequence of the expected arrival of a deputation from Oswego, to confer with the Governor-General on this subject.

2dly. Memorandum subsequent to the arrival of said deputation, recommending that the canals should be closed, unless the British minister at Washington could give some assurance that the trade between Canada and the United States is likely to be placed on a more satisfactory footing.

3dly. Resolutions about to be proposed by the Hon. Mr. Robinson, to the effect that a duty of twenty per cent. should be levied on American goods, and that a system of differential duties should be returned to, encouraging importers to bring their goods into Canada, via St. Lawrence, instead of through the United States.

4thly. Resolutions about to be proposed by the Hon. Mr. Merritt, that her Majesty be prayed to recommend to her Imperial Parliament to enact that similar duties should be imposed on foreign produce (as enumerated in schedule A herewith appended) imported into Great Britain and her dependencies, as are levied on British produce in those foreign countries.

#### SCHEDULE A.

Grain, and breadstuffs of all kinds, vegetables, fruits, seeds, animals, hides, wool, cheese, tallow, horns, salted and fresh meats, ores of all kinds of metals, plaster of paris in stone or ground, ashes, timber, staves, wood, and lumber of all kinds.



[Annex 2 to foregoing.]

[Extract.]

“Her Majesty’s government are prepared, on certain conditions and with certain reservations, to make the concession to which so much importance seems to have been attached by Mr. Clayton, namely: to throw open to the fishermen of the United States, the fisheries in the waters of the British North American colonies, with permission to those fishermen to land on the coast of those colonies for the purpose of drying their nets and curing their fish; provided, that in so doing, they do not interfere with the owners of private property, or with the operations of British fishermen. Her Majesty’s government, however, would require as an indispensable condition, in return for this concession, that all fish, either cured or fresh, imported into the United States from the British North American possessions in vessels of any nation or description, should be admitted into the United States duty free, and upon terms, in all respects, of equality with fish imported by citizens of the United States.”

N. B. As the concession above stated applies solely to the sea fishery, the fisheries in estuaries and in the mouths of rivers are not, of course, included.

Her Majesty’s government do not propose that any part of this arrangement should apply to Newfoundland.

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*Extracts from the journal of the legislative assembly of Newfoundland, 1844.*

*Address to the Queen.*

WEDNESDAY, APRIL 24, 1844.

TO THE QUEEN’S MOST EXCELLENT MAJESTY.

MAY IT PLEASE YOUR MAJESTY,

We, Your Majesty’s most dutiful and loyal subjects, the General Assembly of Newfoundland, in Legislative Session convened, approach Your Majesty with sentiments of sincere and affectionate attachment to Your Majesty’s person and Government, and humbly crave Your Most Gracious Majesty’s attention to the condition of this ancient appendage to Your Majesty’s crown.

The value of the Trade and Fisheries of Newfoundland has for centuries been acknowledged by the Government of England, as a nursery for seamen wherewith to man Your Majesty’s navy; its extreme importance has ever been recognized in time of peace, and realized in time of war.

Its insular situation—the multitude of its safe and commodious harbours—the healthfulness of its climate—and its proximity to Great Britain, whilst it is the key to the western world must ever make the maintenance and prosperity of this Colony a matter of national importance.

The inexhaustable mine of wealth in her seal and cod fisheries which a bountiful providence has opened to the enterprise and industry of her people, would enable Newfoundland to assume and preserve that rank in Your Majesty’s Colonial possessions to which she is entitled had she been permitted to enjoy the full use and benefit

of all her fisheries, and had she been spared the injurious consequences which flow from the competition, within her own bosom, of a foreign nation.

The population of Newfoundland at present amounts to nearly 100,000 souls, altogether of British birth or extraction. They consume annually the produce of other countries to an amount exceeding £300,000 sterling. They annually export produce equal in value to one million sterling, and there are employed in its fisheries alone not less than 20,000 active, enterprising and able bodied seamen.

The most valuable description of our fish, and such alone as is suitable for the Spanish and Portuguese markets, is taken on the Western Coast and on the Banks of Newfoundland.

The bait essential to these Fisheries is caplin and herring. These fish periodically visit certain parts of the bays and shores of this Island, attracting after them shoals of codfish; they annually return in increased quantities to these localities, where they are not molested, and there occasion a corresponding increase of the fish which make them their prey.

An illicit traffic has of late years been opened between some of your Majesty's subjects in this Island and the French settlers at St. Pierre and Miquelon, which we have no power to check, and by means of which the vessels of the latter are abundantly supplied with bait to the prejudice of the fishermen on our shores, who for want of it are often times unable to prosecute their fisheries, or even to procure a sufficiency of food for their daily consumption. Payment for this bait is made partly in cash, but chiefly in spirits and other articles of French manufacture, which the large bounties given by the French Government to encourage their fisheries enabled the settlers to give liberally in return for so essential an accommodation. These articles are smuggled into our ports to the serious damage of our revenues, and to the demoralization of your Majesty's subjects. A few years ago the French fisheries at St. Pierre was seriously diminished by the exhaustion of the bait within their boundaries, and the French authorities were constrained to forbid the taking of any caplin or herrings around their islands, except for the use of their small open boats. Their necessity stimulated the illicit traffic with the British, whereby their wants have become supplied at our expense, and in consequence of the preservation of their bait, codfish now swarm in their waters, whilst they desert the opposite shores of Newfoundland. We beg to remark that the French fishery is limited only by the supply of bait, and since the supply from our shores has been obtained it has greatly increased: already nearly 300 square rigged vessels, varying from a 100 to 400 tons burthen, besides a multitude of open boats, carrying on the cod fishery from St. Pierre and Miquelon. These obtained last year from the shores of Newfoundland upwards of 70,000 barrels of fresh caplin and about 28,000 barrels of fresh herring; and so intent are the French upon this fishery, and so anxious are they to extend it, that owing to the facilities above referred to, fifty additional square rigged vessels were last summer sent to St. Pierre from France. The consequence is that whilst the British fisheries in the Bays of Placentia and Fortune, and on the Banks, are annually diminishing, those of the French are progressively increasing; in proof whereof we humbly crave permission to state, that last year the French caught nearly one million four hundred thousand



quintals codfish, whilst Your Majesty's subjects all over this Island, have not taken more than one million quintals. The number of French fishermen annually employed in these fisheries already amounts to nearly 20,000; and we feel assured that unless Your Majesty's Government will interpose for our protection the most valuable of the British Fisheries of Newfoundland,—those on the Western shores,—will speedily become lost to your Majesty's subjects, and pass into the hands of the people of France.

An apparatus for screwing fish preparatory to its shipment for the South American and West Indian markets has been recently established at St. Pierre, and during the last year your Majesty's subjects have had to compete in Brazil, in the West Indies, and in Portugal with French made fish, caught by British bait.

The Legislature of this Colony, in the year 1836, attempted to arrest, by local enactment, the destructive progress of this illicit trade, but without success. The commanders of your Majesty's ships of war, who from time to time have cruised along our coasts, have successively represented the urgent necessity that exists for the establishment of sufficient protection to our fisheries on the Western shore.

The Revenues of the Colony are wholly insufficient for such a purpose, but even were that not so, the service appears to participate more of an Imperial than of a local character.

The presence, during the summer months, of two small armed sailing vessels, or of a steam vessel, would alone suffice for so important a service; and we earnestly hope that when your Majesty recollects that the evils which oppress us arise from causes over which we have no control, it will not be deemed unreasonable in us to crave from the Parent state assistance in those difficulties which the policy of the parent state occasioned.

We know that your Majesty cannot directly prevent the French Government increasing their fisheries in Newfoundland, neither do we ask or expect that your Majesty will grant to your Majesty's subjects a bounty similar to that which so effectually stimulates and invigorates the subjects of France and the citizens of the United States to prosecute the cod fisheries of Newfoundland; but we look with confidence to the maternal solicitude of your most gracious Majesty for that protection in our rights which can only come from the Imperial Government.

We beg to remark that in the year after the treaty and declaration of Versailles in 1783, an Act was passed by the Parliament of England, in the 26th year of the reign of your Majesty's august predecessor of blessed memory, King George the Third, absolutely prohibiting any of your Majesty's subjects in Newfoundland from selling to foreigners any bait whatsoever. All we now most dutifully ask of your Majesty is such assistance as may be necessary to carry the said enactment into practical operation. The mode in which that assistance may be accorded we submit to the wisdom of your Majesty, confident that the prosperity of this colony will engage your most gracious Majesty's solicitude, and that such measures will be adopted by your Majesty's Government as will secure to your Majesty's loyal subjects in Newfoundland that protection which none living under the benign though vigorous sway of the British sceptre, ask in vain.

*Extracts from the journals of the legislative assembly of Newfoundland, 1845.*

*Report of the Committee of the Newfoundland Assembly appointed in 1845 to enquire into the state of the Fisheries on the Banks and Shores of Newfoundland.*

The Bank and Shore Fisheries have engaged the deep attention of your Committee. These important subjects have not hitherto been investigated by the Legislature; they have therefore considered it their duty to take a general review of them from the earliest period.

These Fisheries were coeval with the Colonial dominion and maritime superiority of England. Newfoundland was her earliest Colonial possession: the fisheries, the first nursery of those seamen that gained her the dominion of the ocean, and with it her vast unbounded Colonial Empire, and trade of the world.

Soon after the discovery of the Island by Cabot, in the Reign of Henry VII., the fisheries gave employment to a considerable number of ships and seamen. As far back as the year 1549, an Act of the British Parliament (Edward VI.) was passed for the better encouragement of the fisheries of Newfoundland. During the Reigns of Elizabeth, James I, Charles I & II., the trade and fisheries engaged much of the attention of the Crown and Parliament. There were two hundred and sixty ships employed in the Newfoundland fisheries in the Reign of Elizabeth. The seamen nursed in these Fisheries mainly assisted in manning her fleets, which defeated the powerful Armada of Spain.

Charles I. in a commission for well-governing his subjects of Newfoundland, observes, that "the navigation and mariners of the Realm have been much increased by the Newfoundland fisheries." Various Acts were passed in the Reign of Charles II., and measures were adopted to revive the fisheries of Newfoundland, which had greatly declined. The preamble of the Act 10th & 11th William and Mary declared that "the trade and fisheries of Newfoundland is a beneficial trade to the kingdom, in the employment of a great number of seamen and ships, to the increase of Her Majesty's Revenue and the encouragement of trade and navigation."

The Act 15th George III. declares the Fisheries "the best nurseries for able and experienced seamen, always ready to man the Royal Navy when occasion may require; and it is the greatest national importance to give all due encouragement to the said fisheries."

In 1763, Lord Chatham, then Mr. Pitt, negotiated in the first instance the Treaty of Paris, which upon his resignation of office was concluded by Lord Bute. Lord Chatham, who had contended, on the part of England, for the whole exclusive fishery of Newfoundland, and affirmed it to be of itself an object worthy to be contested by the extremity of war, censured severely his successor in office for having returned to France some of the privileges which she had before enjoyed upon the coast, and for having ceded, in addition, St. Pierre and Miquelon.

By the Treaty of 1783, additional concessions were made to France in the fisheries of Newfoundland. No part of the Treaty was more uniformly censured than that which related to Newfoundland. The preliminary articles were censured by a vote of the House of Com-



mons, and the Minister of the day had to retire; however, the advantages ceded to the French were confirmed. Lord Viscount Townshend said—"The admission of that Nation (the French) to a participation of the Newfoundland fisheries was a piece of the most dreadful policy and concession that ever disgraced a nation."

Mr. Fox said, "It was evident that our fisheries in Newfoundland, so much boasted of, were in a manner annihilated, not to mention the impolicy of ceding St. Pierre and Miquelon."

Sir Peter Burrell said—"Will any gentleman say that leaving the Americans liberty to dry their fish on the unsettled coast of Newfoundland was the way to prevent disputes: for his part he saw, in the wording of the treaty, an eternal source of quarrels and disputes; and when he considered the footing on which the Americans are with the French, he was not without his apprehensions that the right which the treaty granted to the latter to dry their fish on a coast near 190 miles in length, would occasion various attempts to bring in the Americans to this privilege."

Lord Mulgrave, on the same occasion said—"He considered the Greenland fisheries much inferior to the Newfoundland fisheries." Mr. Pitt expressed similar opinions.

The great advantages, in a national point of view, of the Newfoundland fisheries, have been fully admitted by the most eminent statesmen of a later period. On a motion proposed by Sir John Newport in 1815, in which he expressed his views of the vast importance of the fisheries of Newfoundland, Lord Castlereagh said "He concurred with much of what had been said by the Right Hon. Baronet as to the value of these Fisheries; he most completely coincided with him that they were not only valuable as a great source of wealth to the country but they were still more so as a source of maritime strength."

The greatest of trade Ministers, the late lamented Mr. Huskisson, in his celebrated speeches upon the Shipping Interests, Colonial Trade and Navigation, never loses sight of the great importance of the Fisheries. To the support of them, as a great source of the maritime power of England, he assented to a deviation from the great leading principles of his own commercial system. In that eminent Statesman's speech on the Navigation Laws of the United Kingdom, he says—

First of the Fisheries—

"The ocean is a common field alike open to all the people of the earth; its productions belong to no particular Nation. It was therefore our interest to take care that so much of those productions as might be wanted for the consumption of Great Britain should be exclusively procured by British industry and imported in British ships. This is so simple and so reasonable a rule, that in this part of our navigation system, no alteration whatever has been made, nor do I believe that any ever will be contemplated."

Sir Howard Douglas said that, "the Fisheries in the British Quarters of America were the most productive in the world: if they were not ours whose would they be? what would be the effect of the total abandonment and transfer to another Power of this Branch of Industry upon our Commercial marine and consequently upon our naval ascendancy?"

Your Committee could without end produce authorities, both British and Foreign, to prove the inestimable value of the fisheries

on the Great Bank and Shores of Newfoundland. The French Government have at all periods duly estimated its importance. The Americans, even before they were separated from the Government of the Parent Country, but more particularly since, have lost no opportunity to extend the Fisheries in the Gulf of St. Lawrence and on the Banks and Shores of Newfoundland. Your Committee would conclude upon this head by referring to the opinion of celebrated French authority, (L'Abbe Raynal,) on the great value, in a commercial and national point of view, of the Newfoundland Fisheries.

"The other Colonies, he says, have exhibited a series of injustice, oppression and carnage, which will for ever be holden in detestation. Newfoundland alone hath not offended against humanity nor injured the rights of any other people. The other settlements have yielded productions, only by receiving an equal value in exchange. Newfoundland alone hath drawn from the depths of the waters riches formed by nature alone, and which furnishes subsistence to several countries of both hemispheres.

"How much time hath elapsed before this parallel hath been made,—of what importance did fish appear when compared to the money which men went in search of in the new world. It was long before it was understood, if even it be yet understood, that the representation of the thing is not of greater value than the thing itself, and that a ship filled with Cod and a Galleon are vessels equally laden with Gold:—there is even this remarkable difference, that mines can be exhausted and the fisheries never are. Gold is not re-productive, but the fish are so incessantly."

Your Committee consider it necessary to explain the grounds on which they refer to so many authorities to prove the value of the Newfoundland fisheries. The proposition, as far as they could learn, has never yet been questioned. They were induced to make these references in consequence of the utter neglect with which these fisheries have been regarded by the British Government, since the peace of 1814, on the one hand, and the avidity with which they were prosecuted by the French and American Governments since that period on the other. "Great Britain, who owns, supports, and defends these Colonies and Fisheries, and has derived from them the principal means of defending herself, gave up, at the conclusion of the war, to her vanquished opponents the most valuable portion of her Colonial coasts and waters. To the French in 1814 she conceded the North coast and Western coast of Newfoundland, from Cape St. John to Cape Ray: to the Americans in 1818 she gave up the right of taking fish on the Southern and Western coasts of the same Island, from the Rameau Islands to Cape Ray and from Cape Ray to the Quirpon Islands, to the Magdalen Islands, and on the whole coast of Labrador, from Mount Jolly Northwards to the limits of Hudson's Bay, together with the liberty of using the unsettled parts of Labrador and the Southern parts of Newfoundland, for drying and curing fish." It cannot be questioned that Great Britain, by these concessions, ceded to the French and the Americans the best fishing grounds; and these Governments, to make the most of these advantages, grant large bounties for the encouragement of these fisheries, with the avowed purpose of increasing their maritime strength. Your Committee may therefore state that the Newfoundland fisheries, instead of being,



in the words of the British Act of Parliament, a nursery for seamen to man the British Navy when an occasion should require, have become converted into the best nurseries both for the French and American Navies.

The deep sea fishery on the Grand Bank and other Banks can only be prosecuted in Crafts and Vessels of a large size, and with an expensive outfit. The French and Americans, by their bounties, are enabled to prosecute them to advantage, while every attempt of the British has proved a failure, arising not from want of skill or enterprise on their parts, but altogether from the superior advantage enjoyed in the form of bounties by their Foreign rivals.

The unequal competition has swept the British ships from that fishery; it is now monopolized by the French and Americans, and without a rival.

As the Newfoundland fisheries are now composed of that portion carried on by the British, that by the French, and that by the Americans, your Committee will give an abstract of each fishery, founded on such official information and otherwise as they could obtain.

#### 1ST,—THE FISHERIES.

In 1615, Captain R. Whitbourne represents the British fisheries as employing 250 Ships, averaging about 60 tons, and Twenty Mariners to each ship—in all fifteen thousand tons of shipping, 5,000 seamen and 1,250 fishing boats.

In 1644, in a representation made, the fishery was represented to consist of 270 sail of Ships, computed at 80 tons each, and for every 80 tons 50 men—in all 2,160 tons and 10,800 seamen.

In the Reign of Charles II, the British fishery greatly declined and the French fishery advanced in proportion.

In 1677 the British fishery is represented to consist of 109 ships, 4,475 seamen, and 892 boats, with 337 belonging to bye boat keepers.

In 1684, owing to the same cause, the French competition, the British Fishery was reduced to 43 fishing ships, 1,409 seamen, and 294 boats, with 304 boats belonging to resident boat keepers. The extraordinary falling off of the fishery at this period is thus explained by the Lords of the Privy Council of Trade, in 1718.

“But this decay of the fishery trade was not the only loss this Kingdom sustained on this occasion; for as Captain Jones, one of the Commodores of the Convoy in 1682, hath affirmed of his own knowledge, the traders from New England to Newfoundland yearly made voyages for the sake of spiriting away the fishermen, so that the Newfoundland fishery, which was formerly the great nursery, for breeding up stout and able mariners, was now become a mere drain that carried off very many of the best and most useful of all the British Sailors, and it is too notorious that this practice has prevailed ever since.”

The state of the British Fishery, from 1699 to 1729, exhibits the same rise and fall, as will appear by the following

OFFICE OF THE COMMITTEE OF THE PRIVY COUNCIL FOR TRADE, }  
Whitehall, 19th March, 1792. }

*Recapitulation.*

Average of years.	Number of ships.	Burthen of ships.	Number of men belonging to the ships.	Number of passengers.	Number of boats.	Qtls. of fish made.	Qtls. of fish carried to market.	Tierces of salmon carried to market.	Tons of train oil made.	Number of inhabitants remaining in the country in winter.
1699, 1700, 1701.....	192	7,991	4,026	.....	1,314	216,320	154,370	.....	1,049	3,506
1714, 1715, 1716.....	111	9,148	2,119	.....	992	97,730	102,333	.....	891	3,561
1749, 1750, 1751.....	288	33,612	4,108	3,149	1,370	432,318	422,116	1,308	2,532	5,855
1764-5-6-7-8-9, 1770-1-2-3-4.....	516	40,091	5,435	6,441	2,113	621,276	524,296	5,146	2,882	12,340
1784-5-6-7-8-9, 1790-1-2.....	480	48,950	4,422	4,617	2,258	637,955	622,108	2,974	2,364	15,253

The occasional decline of the British fisheries appears to be accounted for by a variety of causes. The true causes—French and American competition and large bounties—are scarcely noticed. It was confidently stated that it was owing to the resident population not exceeding in those days from five to ten thousand. A report of the Lords of the Privy Council of trade states, in 1718, that the indulgence shewn to the planters in 1677, by permitting them to remain in the country, rendered the Charter ineffectual, reduced the fishery to the lowest ebb, and favoured both the French and the New Englanders in carrying on the fishing trade. The same Report in further accounting for the decline of the British Fisheries, attributed it mainly to the neglect in not enforcing the 10th article of the Charter of Charles I., which ordains—

“That no person shall set up any Tavern, for selling Wines, Beer, &c. to entertain the Fishermen, &c.; and it is as certain that the flourishing state of the fishery trade during the aforesaid period, was in a great measure, owing to this wholesome prohibition; for, as long as it was maintained, so long the trade prospered; and it was no sooner dispensed with, than the trade sensibly declined; and although the planters were afterwards kept in awe for some time by the Charters that were granted by King Charles II. which confirmed the said prohibition, nevertheless, when that difficulty was surmounted, and they were at liberty to pursue their own measures, the fishery immediately languished.”

The true cause of the falling off of the British fishery may be attributed to the unequal competition with which it had to contend from foreigners, their fisheries on the Newfoundland coast have been invariably supported by large bounties and other encouragements. It can be much more satisfactorily accounted for in that way, than to attribute it to the settlement of the Island, a resident population,



or even the establishment of taverns and public houses. A subsequent report of the Lords of the Committee of the Privy Council of Trade, on the subject of the Newfoundland fishery dated 17th March, 1786, accounts for it in a much more satisfactory manner when they state—The French give a bounty upon fish, the produce of their fishery, imported into their West India Islands, of ten livres per quintal, and at the same time lay a duty of five livres per quintal upon all fish imported into those islands by foreign nations. This bounty and duty taken together is equal to a prohibition of foreign fish; and it is a clear proof that even in the opinion of their own government, nothing less than an encouragement more than equal to the first cost of their fish can enable their fishery to have a share of their own markets in the West Indies.

The French also give a bounty of 5 livres per quintal upon all fish, the produce of their fishery, carried into Spain, Portugal and Italy. This bounty is also so extravagant as clearly to evince the opinion of the French Government of the low state of their fishery. If the Legislature here was to give a like bounty upon the fish of Your Majesty's subjects carried on in those markets, it would amount to 120,000 Pounds per annum. Such a measure can therefore be calculated merely to introduce their fish into those markets, but can never be intended as a permanent encouragement.

Your Committee wish particularly to draw attention to these opinions of the Lords of the Committee of the Privy Council of Trade, to show how mistaken they were in supposing that the French intended their bounties merely as a temporary expedient. It will further appear that they have not only continued them down to the present time, but have extended the fishery thereby to an extent greater than at any former period.

Your Committee having shewn that it was large bounties alone enabled the French to carry on the fishery on the coast of Newfoundland, down to the period of 1793, have now briefly to remark, that from the war which broke out in that year until the year 1814, with the slight interruption of the Peace of Amiens of 1802, the British had full possession of the fisheries undisturbed by the competition of the French; during that period the fisheries greatly increased and prospered, and the quantity of fish caught ranged from eight hundred thousand to a million quintals per annum. It realized high prices in all the foreign markets; the price at Newfoundland advanced to the enormous sum of 45s. sterling per quintal. The estimated value of the exports, the produce of the fisheries of one or two of the last years of the war, were stated to exceed two millions and one half sterling.

Your Committee have now to draw your attention to the violent and sudden revolution, the rapid and unparalleled decline in the trade and fisheries, consequent upon the Peace, first with France, and then with America. To the French were ceded the Islands of St. Pierre and Miquelon, and the shores from Cape Ray to Cape John. To the Americans were soon after granted equally valuable fishing grounds; and in addition their respective Governments granted enormous bounties to uphold their fisheries, equal almost to the intrinsic value of fish. It leaves no ground to doubt the cause which brought such universal ruin at that period, upon the British trade and fisheries. Your Committee cannot better point out the

cause of the great depression of the fisheries of that period, than by giving an extract from the evidence before the House of Commons in 1817.

George Garland, Esq. states to the Committee, (Michael Angelo Taylor, Esq., in the chair)—That

"Another cause of the distress of trade may be found in the surrender by our Government, to France, by the late treaty, of a large part of the coast of Newfoundland, which is by far the most favourable part of the whole Island for the prosecution of the fishery, and to which, in consequence of the general scarcity of fish about St. John's and in Conception Bay, the inhabitants of those districts, the most populous in the Island, were wont annually to resort during the whole of the fishing season, though at a distance of 200 or 300 miles. Since the cession of the French Shore, the British fishermen of the said districts, confined to their own coast, have not caught above half the quantity of fish which they formerly did with the same outfit. The merchants urgently requested the Government, previous to the peace, to retain this valuable part of the island, and though we do not presume to question the expediency of the sacrifice which has been made of their individual interests for the promotion of national objects, yet I would submit that it strengthens their claim to reasonable relief; and lastly, but by no means least, another cause is to be found in the growing competition of the French Newfoundland trade, which is fostered by its Government with the most anxious solicitude, freed from duties either on its ships or produce, and encouraged by enormous bounties on its produce, and on the men engaged in the trade, as will appear by a document which I beg to produce.

**"FRENCH BOUNTIES ON THEIR NEWFOUNDLAND FISHERIES."**

"On Fish exported from Newfoundland, or from France to the French Colonies, 24 francs per pelletrical, which is equal to 12 francs or 10 shillings per English quintal of 112 lbs.

"On fish exported from Newfoundland to France, and from thence to Spain, Portugal, Italy, and the Levant Ports, 12 francs per metrical quintal, which is equal to six francs or five shillings per English quintal of 112 lbs.

"On fish exported from Newfoundland to Italy, Spain and Portugal, direct, 10 francs per metrical quintal, which is equal to five francs or four shillings and two pence per English quintal of 112 lbs.

"On every killogramme of oil exported from Newfoundland to France ten centimes, which is equal to 75 shillings per ton of 256 gallons English.

"Of every killogramme of cods' roes and eggs, from Newfoundland to France, 20 centimes, which is equal to 8s. 4d. per English quintal or cwt. Besides the above a bounty of 50 francs or 41s. 8d., per man, is allowed to the French merchants for every man and boy employed in the French shore fishery, and 15 francs or 12s. 6d. for every man and boy employed in the French Bank fishery sailing annually from the French ports.

"This competition has already excluded us from the French markets, where in the year 1815 we disposed of 100,000 quintals of fish; it has met us in the markets of Spain and Italy, although, in a



limited degree, owing to the recent re-establishment of the French fisheries; and it is evident that nothing but the support and assistance of our Government in some way or other can enable us to maintain the competition much longer with rivals who receive a bounty equal to one third of the value of the article. I have now completed the exposition of the causes of distress."

Mr. Attwood said—

"Because it appears that the French are actually prosecuting their fishery with all the enterprise and activity that might be expected from such unlimited encouragement, notwithstanding the French fishery was so very unfortunate last year, that they were only able to supply little more than France, and their own colonies with fish. I am told, on the authority of the French Consul, that they have despatched more than four times the number of vessels on the fishery this year than they sent out last year. These are the grounds of my opinion, and without support from our Government or the intervention of some great political event, that three-fourths of the present Newfoundland trade will go from this country, into the hands of France in the space of three years."

The result of the representations and evidence adduced before the Committee was the following Report.

"It appears also to your Committee, that the trade itself has experienced a serious and alarming depression. The causes from which this has arisen will require, in the opinion of your Committee, in the ensuing Session of Parliament, a much more detailed and accurate investigation; but enough has been shown by the testimony of respectable witnesses, to prove, before this House separates, that the fisheries will be most materially injured, the capital embarked in it by degrees withdrawn, and the nursery for seamen, hitherto so justly valued, almost entirely lost.

Notwithstanding this strong representation on the part of a Committee of the British House of Commons, the subject has not since been taken up by the Government.—No relief or support has been afforded from that period to the present; the British fisheries have been left to languish and contend with the unequal competition; and as it was clearly proved, by the evidence of Mr. Garland and Mr. Attwood, the great and most important portions of the most valuable of the Newfoundland fisheries have fallen into the hands of the French and Americans, and without any rivalry on the part of the British. The British fishery is now confined to an in-shore fishery prosecuted in punts and small craft, leaving the deep sea fishery on the Great Bank and other valuable Banks and fishing grounds altogether in the hands of the French and Americans.

Your Committee have no hesitation in stating that, if the framers of the treaties of 1814 and 1818, had agreed to exclude the British from these great fisheries, they could not more effectually have deprived them of all participation in them.

Your Committee will now briefly remark upon the state of the fisheries from the peace of 1814, down to the present period, having to contend with the difficulties already noticed. Thrown altogether upon their own resources, unaided by the Parent Government, it must appear difficult to account for the preservation, by the British, of even a remnant of the fisheries. According to all mercantile calculation they should have fallen into the hands of the French and

Americans; however, the necessities of the large population which grew up during the period of a prosperous fishery, worked for itself auxiliary means of employment. The cultivation of the soil, combining fishery and farming—has enabled them to exist in the country, and thereby to preserve the inshore fishery, the only portion that now remains to them. They have extended that fishery, and the aggregate quantity of fish caught is equal to that of the amount of the most prosperous years.

Your Committee, in making this admission, contend that it only proves that a trade capable of holding up against difficulties that would have overwhelmed any other in Her Majesty's wide extended dominions, is worthy of more attention and consideration from the Parent Government than has hitherto been extended towards it.

#### BRITISH BANK FISHERY.

The Great Bank Fishery suddenly declined after the Treaties of 1814 and 1818. In the year 1775 it gave employment to about four hundred sail of registered vessels, averaging from eighty to one hundred and forty tons burthen, employing from eight to ten thousand fishermen and shoremén. As many as one hundred and forty sail was fitted out from the District of St. John's, and the remainder from the various harbours of the Island. This important branch of the British Fishery was extensively prosecuted during the whole of the French war. No sooner did the French regain the privilege of prosecuting the fishery, than their extensive Bounties undermined the British Bank Fishery. Various attempts have been made to participate in it, but every attempt only brought ruin and disappointment on the British Merchant or fishermen; the consequence is, at this time, that the great Newfoundland Bank Fishery, so valuable in a commercial, but more particularly in a national point of view, is surrendered, without a struggle, to the rivals of England, the French and Americans;—these powers employing at least one thousand vessels of considerable burthen, manned with not less than thirty thousand seamen; the British not having more than five vessels and fifty men employed in the great deep-sea fishery on the Banks of Newfoundland.

Your Committee have to draw your attention to the mode of fishing lately adopted by the French; they have adopted what is called the Bultow system, by which means they extend lines and hooks miles round the ship. For a particular and accurate description of this mode of fishing your Committee have to refer to the statements of Messrs. Mudge and Co., appended to this Report.

Your Committee, in reference to this subject, have reason to believe that the Bultow system of fishing is most destructive;—it is a novel mode of fishing, not sanctioned by any previous practice or custom.—A question may arise whether it is not a violation of the spirit of the treaty with France. It is a subject that should, without delay, be brought under the consideration of Her Majesty's Government.

Your Committee have not sufficient data to give a particular and authentic account of the French and American Fisheries prosecuted in the Gulf of St. Lawrence and on the Banks and Shores of Newfoundland.



## FRENCH FISHERIES.

It is universally admitted, by all those who are acquainted with the subject, that the French occupy by far the best fishing stations. Having possession of the Islands of St. Pierre and Miquelon, they can prosecute the fishery to the Grand Bank with the greatest facility. They have also what has been called the Garden of Newfoundland, the line of coast from Cape Ray to Cape John; that portion of it between Cape John and the Straights of Belleisle secured to them the most prolific fishing grounds; they not only have the advantage of catching a larger quantity of fish, but the climate is found, by the absence of fog, much more suitable for making and curing it, and preparing it for the foreign markets.

The principal British Fishery was carried on in that quarter during the war. To use the words of an intelligent writer on the subject: "British fishers are consequently driven to the shores of Labrador, a longer voyage, where the quality of the fish, and the means of drying and curing them, are far inferior.—The North-Eastern coast of Newfoundland happens to be precisely that which is most exempted from fog; the same winds which envelope other parts of the Island in damp and mist, leaves this portion clear and dry—a circumstance unknown, or apparently unregarded, by those who, in addition to other concessions of land and water, seems thus to have also given away the light and heat of the sun; the consequence is, that in the curing of our fish a great part is destroyed by the fog and damp, while the French fishermen, in addition to the abundance and quality of their fish, possess and monopolize the still greater advantage of the clearest and sunniest coasts."

Your Committee have reason to believe that this exclusive fishery is an usurpation on the part of the French—that all they are entitled to by treaty is a concurrent right; at the same time it must be admitted that their exclusive claim has, in some degree, been sanctioned by the forbearance and policy of the British Government.

The extent of the French fishery of St. Pierre and Miquelon, and on the other coasts of the Island, may be estimated by a catch of a million quintals of fish, employing upwards of seven hundred sail of Large ships, and from twenty to five and twenty thousand fishermen and seamen. The French, both at St. Pierre and Miquelon, and on the Northern part of the Island, carry on an illicit trade with the British settlers, particularly in bait, for the supply of their Bankers, which is greatly injurious to British interests, and calculated to destroy the British fisheries on the coast by depriving them of their regular supply of bait. Your Committee have to draw particular attention to this point, and have to refer to the evidence appended to this Report.

In making this brief reference to the French fisheries, your Committee must observe, that if the British and French fisheries were prosecuted without encouragement in the form of bounties, British industry, notwithstanding the other advantages possessed by the French, would assume its usual superiority, but it is impossible for them to compete with the French, upheld as they are by immense bounties. The object of France is not to create a trade, but to create a navy. It is forcibly said by Mr. McGregor, in his history: "In ceding to France the right of Fishing on the shores of Newfoundland,

from Cape John to Cape Ray, with the Islands of St. Pierre and Miquelon, we gave that ambitious nation all the means that her government desires of manning a navy; and, if we were determined to lay a train of circumstances which, by their operation, should sap the very vitals of our native strength, we could not more effectually have done so than by granting a full participation of those fisheries to France and America."

#### AMERICAN FISHERIES.

Your Committee, in referring to the American fisheries, have also to say, that they have no data to ground a correct estimate of them; but they can state that it is very extensive, employing from one thousand five hundred to two thousand sail of decked vessels, averaging from forty to one hundred tons burthen. The catch of fish in the British waters has been estimated at one million one hundred thousand quintals, which must give employment to twenty-five thousand fishermen and seamen. The American fishers are observed in great numbers on the Grand Bank, and on the fishing grounds in the Gulf of St. Lawrence—all along the shores of Nova Scotia, Prince Edward's Island, Newfoundland, and the shores of Labrador. They commence their Fishery early in the Spring, and follow it up with the greatest assiduity, to the latest period of the fall. The American fishery is encouraged by a bounty of twenty shillings per ton, and the supply of their own markets protected by a duty of five shilling per quintal on foreign fish.

Your Committee have to observe that the great catch of Fish by the Americans, supported as it is by bounties and other encouragements, operates, concurrently with the French catch and bounties, to sap the foundation of the British fishery.

By the Convention of 1818 the Americans of the United States are allowed to fish along all our coasts and harbors, within three marine miles of the shore, (an indefinite distance) and of curing fish in such harbours and bays as are uninhabited, or, if inhabited, with the consent of the inhabitants. The expert and industrious Americans, ever fertile in expedients, and always on the alert in the produce of gain, know well how to take advantage of such a profitable concession.

From the sea coasts of Newfoundland ceded to France, which comprehend half the shores of the Island, and the best fishing grounds, our fishermen have been expelled, and driven to the necessity of resorting from two to four hundred miles further North, to the coast of Labrador, where they are again met by the swarms of Americans.

"By particular circumstances, and the better to accomplish their object, the Americans are known to be guided by one feeling to act more in union on arriving on the fishing coasts; they frequently occupy the whole of the best fishing banks, to the exclusion of our fishermen; and their daring aggressions have gone so far as to drive by force our vessels and boats from their stations, and tear down the British flag in the harbors, hoisting in its place that of the United States;—they are easily enabled, from their vastly superior numbers, to take all manner of advantage of our people. They frequently fish by means of seines, which they spread across the best places along the shores, and thus prevent the industry and success of the British Fishermen."



Mr. Young on the same subject, says—

“As early as the month of March if any stranger approach the coast of Nova Scotia, his observations would induce him to believe, that he was advancing toward the territory of some great commercial State. At a short distance from the shore, and on the banks and most productive fishing grounds, he would perceive fleets or continuous lines of small shallops, and if the day and season were auspicious, he would discover that their crews were busily employed in drawing forth the treasures of the deep. Seeing them thus anchored within view, nay, within almost the shadow of their shore, and employed in appropriating the resources which would appear to belong to it, the deduction would be irresistible that they had recently left the neighboring harbors, and were of course manned by the inhabitants. He would, however be in error. On inquiry he would learn that they have come a distance of three hundred miles to avail themselves of the privilege—that they belonged to a rival state, and that they enjoyed the right by virtue of a treaty, which the Government have bestowed, without necessity and without return. He would learn also, that this liberal concession was highly disadvantageous to the inhabitants on the coast by lessening the productiveness of the fishing grounds.”

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*Extract from the minutes of the Legislative Assembly of Newfoundland, 1846-7.*

TUESDAY, DECEMBER 15, 1846.

*Resolved*, That a Committee be appointed to prepare Addresses to Her Majesty the Queen, and both Houses of the Imperial Parliament, on the subject of the Fisheries of the Colony.

*Ordered*, That the Hon. Mr. Morris, Hon. Mr. Kent, Mr. Glen, and Mr. Job, do form such Committee.

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THURSDAY, JANUARY 14, 1847.

The Hon. Mr. Morris, from the Select Committee appointed to prepare an Address to Her Majesty upon the state of the Fisheries of this Colony, reported that they had prepared a draft of the said Address, which he read in his place, and is as follows—

TO THE QUEEN'S MOST EXCELLENT MAJESTY,

We, Your Majesty's devoted and loyal Subjects, the General Assembly of Newfoundland, beg most humbly to draw Your Majesty's attention to the present state of the Fisheries of this, Your Majesty's most ancient Colony; and at the same time to remind Your Majesty that the Fisheries of Newfoundland, from the earliest period of Transatlantic Colonization, were considered of great national importance. In these fisheries were formed the first nursery for seamen to man the Navy of England, which gained for her the dominion of the seas, her vast Colonial Empire, and the trade of the world.

The General Assembly deeply regret the necessity they are under of complaining of the unwise policy, sanctioned by the advisors of Your Majesty's Royal Predecessors, in ceding to the subjects of Foreign Powers the right of fishing on the Banks, and also the principal parts of the Shores and Harbours of Newfoundland. By virtue

of the Treaty of Utrecht, and by subsequent Treaties founded thereon, the subjects of France exercise an exclusive right of fishing on the best and most productive fishing ground; and by the American Treaty of 1818, the subjects of the United States enjoy almost equal privileges. Under the sanction of these Treaties the French and Americans have monopolized the whole of the deep sea fishery on the Grand Bank and other Banks, as well as the fisheries from the principal Harbours in the Island. The subjects of France claim and exercise an exclusive right to fish in all the Harbours between Cape Ray and Cape John, an extent of upwards of three hundred miles of coast;—they also occupy the Islands of St. Pierre and Miquelon, on the opposite side of the Island. These privileges give the French the command of the Northern fishery, the Western fishery, and the fishery in the Gulf of St. Lawrence. The possession of the Islands of St. Pierre and Miquelon gives them command of the fishery on the Grand Bank and the productive fishing grounds in the Gulf of St. Lawrence. The subjects of the United States of America participate in all these advantages; and the consequence is, the subjects of Foreign Powers have engrossed the whole of the deep sea fishery. To show to your Majesty the great decrease of the British deep sea fishery, the General Assembly have only to state that in former periods the British employed on the Grand Banks upwards of four hundred ships, of the burthen of from 80 to 200 tons; and upwards of 1000 large boats, manned with from four to six men each, on various other Banks. At the present time there are fitted out for the Grand Bank from the Island of Newfoundland, by your Majesty's subjects, not more than two small vessels, and the large class of boats is reduced to about two hundred. In short, we can state that the deep sea fishery has passed into the hands of Foreigners, and the only fishery left to Your Majesty's subjects is the inshore fishery, prosecuted in small boats, each manned by two or three men. The General Assembly have to state to Your Majesty that the deep sea Fisheries have always been considered the great nursery for seamen, and they humbly presume to express to Your Majesty their opinion that it is not consistent with sound policy to allow them to be engrossed altogether by foreigners. On a moderate calculation, the number of fishermen and seamen employed by them in the Bank and other Fisheries of Newfoundland, does not fall short of forty thousand men.

The General Assembly wish to draw Your Majesty's attention to the value attached to the Newfoundland Fisheries by the Government of France, which will more clearly appear by reference to the Report of the Minister of the Marine of that country, for the year 1829, to the King of France, recommending a continuation of the Bounties for the support of the French Newfoundland Fisheries. He said "Besides, the expense of Bounties is not without compensation, and it may be said none other is more beneficial to the state." "This fishery employs and gives support to 12,000 seamen, who, even supposing they could be employed in peaceable times in Your Majesty's Navy, would cost the country from six to eight millions for six or eight months in the year. In 1828, the total amount of Bounties reached three millions. Thus this trade gives to the state for three millions that naval advantage which the Admiralty could not



dispense with, although the cost would be six or eight millions, without reckoning many other expenses. Thus the only question that has so long been discussed is this, whether the same advantages may be obtained, at a reduced expense; prudence would forbid my recommending at present an experiment which might compromise this valuable trade, *as well as in some degree the security of the state.*" "That at present a reduction could not be made without being liable to endanger the property of a great many merchants, the existence of a large portion of our maritime population, and the interests of a branch of the public service, to the prosperity of which the whole *national welfare is so closely allied.*"

The General Assembly, in drawing Your Majesty's attention to the recommendation of the French Minister to the King of France, showing the paramount importance, in a national point of view, of the Fisheries on the Banks and along the shores of Newfoundland, humbly take leave to remind Your Majesty that their great value has been viewed in the same light by Your Majesty's Royal Predecessors, and by the long line of eminent ministers and statesmen who directed and guided their Councils.

MAY IT PLEASE YOUR MAJESTY—

It is not the exclusive privilege exercised by Foreigners on the most productive Fishing grounds that we so much complain of, as the effect of the large Bounties and other protection afforded by the Governments of France and America to their subjects engaged in the Newfoundland Fisheries. These Bounties amount to many hundred thousand pounds per annum; the effect of which operates against the British Fisheries more injuriously than would a direct impost for an equal amount. It creates an unequal competition in the markets in Europe and the West Indies, most injurious to Your Majesty's subjects engaged in the Fisheries. British fish must be sold in these markets at the same rate as the fish of the French and Americans, caught under the protection of enormous bounties. There are many other matters connected with this subject which we might adduce, but we will not at present presume to press them on Your Majesty's attention. We now most humbly pray that Your Majesty will direct an inquiry to be made into the cause why the deep sea fishery on the Banks of Newfoundland has been transferred altogether into the hands of the subjects of France and America.

The General Assembly humbly pray Your Majesty will take steps to persuade the Governments of France and America to withdraw their Bounties to the Newfoundland Fisheries, so that Your Majesty's subjects may be placed on an equal footing with them.

We humbly hope that means may be devised to afford some encouragement for the development of the Agricultural resources of the country. Were it not for the employment afforded by the cultivation of the soil, since the cession of the Fisheries to the French and Americans by the treaties of 1814 and 1818, Your Majesty's subjects could not have withstood the unequal competition, and must have removed from the Island, and surrendered those valuable Fisheries altogether into the hands of their foreign rivals.

*Resolved,* That the said Address be adopted.

*Ordered,* That the said Address be engrossed.

On motion of the Hon. Mr. Morris, seconded by the Hon. Mr. Kent, *Resolved*, That copies of the said Address, *mutatus mutandis*, be presented to both Houses of the Imperial Parliament, and that the Hon. Mr. Speaker transmit the Address to the House of Lords to the Right Honorable Earl Clarendon, and the Address to the House of Commons to the Hon. C. P. Wallace.

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*Extracts from the minutes of the Legislative Assembly of Newfoundland, 1848-9.*

WEDNESDAY, APRIL 18, 1849.

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Mr. Shea, from the Joint Committee of this House and Her Majesty's Council to inquire into the state of the Fisheries of this Colony, presented the draft of An Address to Her Most gracious Majesty, which he read in his place, and afterwards delivered in at the Clerk's table, where it was again read, as follows:—

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

MAY IT PLEASE YOUR MAJESTY—

We, Your Majesty's loyal subjects, the Council and Assembly of Newfoundland, in Session convened, beg leave most humbly to approach Your Majesty with feelings of the most profound respect for Your Majesty's person and government.

The present depressed condition of this Colony imperatively demands of us that we should bring the subject prominently under the notice of Your Majesty. We cannot believe that a feeling of unconcern will pervade Your Majesty's counsels in regard to the interests of this Island, the oldest transatlantic possession of the British Crown; and though the benefits we might have hoped for have not heretofore attended on our appeals on this subject to the parent government, the daily aggravating evils under which we labour compel us to renewed effort to obtain a hearing for our just complaints.

We feel assured that a correct appreciation of these evils must lead to the application of those measures of redress which a loyal dependency may always confidently hope for at the hands of a paternal government. We are sensible of the lively interest Your Majesty entertains for all who live under the dominion of the British Crown and that Your Majesty would not permit the continuance of a state of things which experience has shown to be pregnant with ruinous results.

The grounds on which we presume to rest our appeal for Your Majesty's consideration are, that the interests of this colony were sacrificed to views of Imperial policy. By the treaty of Utrecht and subsequent treaties, foreign powers were granted the right of fishing on the Banks and the principal part of the shores and harbors of Newfoundland. The French have successfully claimed the right of the exclusive enjoyment of the Fisheries from Cape Ray to Cape John, an extent of three hundred miles of coast, and embracing the most valuable portions of the fishing grounds of this Island. The American Treaty of 1818, gives the subjects of the latter power privileges nearly equal to those enjoyed by the French, and thus are the natural rights of Your Majesty's loyal subjects ruinously compro-



mised. The exigencies of Imperial interests might have demanded these concessions at the hands of Your Majesty's predecessors; but we humbly and respectfully submit whether it is consistent with any recognized principles of justice, that the Imperial advantages on which these Treaties were grounded should be purchased at the sacrifice of those rights, the preservation of which can alone secure the prosperity of this ancient and loyal colony.

But even if the evil rested here—if it were simply the right of foreign powers to concurrent privileges of fishing on our coasts, and prosecuting their avocations on similar terms, we should feel but comparatively small cause of complaint, for fair competition would leave us but little to apprehend for the success of our trade and fisheries. Accordingly, in the abstract, the concessions embraced in the treaties referred to would have been lightly regarded by Your Majesty's loyal subjects; but they have been made the foundation of the system under which those foreign powers now prosecute their fisheries, sustained by enormous bounties which have urged them into a condition of activity and strength, furnishing us every day with fresh proofs of the hopelessness of unaided competition, of which the decreasing productiveness of our fisheries and the awful impoverishment of the people are a truthful and lamentable development.

#### MAY IT PLEASE YOUR MAJESTY—

We look to the source of all this, and we find it has been for matters of imperial policy that our interests have been thus totally disregarded.

The various results of these bounties have frequently been brought by the Legislature and the people of this Colony under the notice of the Imperial Government. The foreign fisheries so sustained are annually becoming augmented, while ours are marked by corresponding diminution and decay. The effect of these bounties has been to give to the French and Americans the entire deep sea fishing, formerly the boasted nursery for British seamen, but now completely transferred to our powerful and ambitious rivals for maritime supremacy. The bounty on the French-caught fish is fully equal to the price usually obtained for British cure, and met as we are in almost all our Markets by the protected fish of our competitors, we are frequently driven to consent to sales which leave much less than the actual cost of production.

A most fruitful source of the prosperity of the French fisheries is to be found in the supplies of bait they receive from our shores for the Bankers which fit out at St. Pierre and Miquelon, in direct contravention of the Imperial Act 26, G. 3., cap. 26. This traffic is carried on to the serious injury of the British on that part of the coast and to the detriment generally of our fisheries. This question is ably treated of by Captain Loch of Your Majesty's ship *Alarm*, who was employed in the protection of our fisheries in the past year, and whose valuable report forms an appendix to this Address.

These evils have been progressing for many years until they have reached a crisis which places our existence as a colony in utter peril. The great fire in 1846 which swept away three quarters of a million of the capital of the country assisted materially in hastening this conjuncture, and precipitated the result which the operation of the

treaties in question was producing by slower but not less certain means.

Since the period of that disastrous event, the sum of Thirty-five Thousand Pounds have been disbursed from the public Treasury of the colony to preserve the fishing population from actual starvation.

Nor do we see a prospect of relief from a continued pressure while the evils of foreign competition in our fisheries remain uncorrected. So strong is the feeling widely spreading on this subject that numbers of our most hardy fishermen are quitting the colony to seek from our rivals that remunerative employment which they despair of being able to obtain at home, and it creates not unnaturally a feeling of deep discontent that in the prosecution of similar pursuits in which they are often together engaged, the subjects of other powers find an adequate recompense for their toil, while British fishermen in Newfoundland are unable to obtain the common necessities of life, and have latterly been dependent in a great degree on the bounty of the local government for support.

MAY IT PLEASE YOUR MAJESTY—

The result of such a condition of things must be inevitably ruinous.—The continued emigration of our fishermen can scarcely be prevented, and a valuable portion of our population will be attracted to swell the tide of competition which assails us. They will naturally flee from a colony whose resources are withered by neglect, to obtain that reward for their labour which is offered to them by the rivals of British naval supremacy.

Neglect has long been our portion. While other Colonies have been from time to time recipients of Imperial Bounty, no such aid has ever been extended to Newfoundland, which, considered by reference to its maritime and commercial importance, is the most valuable of the transatlantic British possessions.

MAY IT PLEASE YOUR MAJESTY—

The people of this colony are not chargeable with the causes of its present depression. The trade was fairly and legitimately carried on, exhibiting none of those wild speculations which brought ruin on other colonies, but sustaining itself without bounty or protection, and had our natural rights been preserved the necessity for this appeal would not have arisen. But for purposes of Imperial Policy the best portions of our Fisheries were handed over to Foreign rivals, whose operations have brought Your Majesty's loyal subjects to their present alarming state.

It will not be a matter of surprise when we acquaint Your Majesty that from the pressure created by all these adverse circumstances, and the diminution of our revenue, the colony has within the last six years contracted a debt of One Hundred Thousand Pounds.

The cession of so large a portion of our Fisheries by Your Majesty's Royal Predecessors is the only intelligible cause of the evils which necessitated this debt.

We therefore humbly submit that the Imperial Government should relieve us from the liabilities which are so clearly the result of the sacrifices forced on the colony by the measures adopted for Imperial purposes alone.



The French Fisheries are upheld by the supplies of Bait they receive from our shores. By the Imperial Act 26, Geo. 3, this traffic is declared to be illegal; and yet it is vigorously carried on because of the absence of a sufficient preventive force to suppress it. On the coast of Labrador Your Majesty's subjects are exposed to continued depredations on the part of the French and Americans, and though annually visited by one of your Majesty's ships, this serves but little more than to ascertain the fact that such incursions are made, and that they can only be prevented by the continued presence of a Man-of-War during the summer season.

Two or three War-steamers employed during the Fishing-season would be required to protect that portion of our rights which the treaties have left us. Several French vessels of War are constantly occupied in the protection of their Fishery, while the occasional presence of one vessel is all we have hitherto had to show that British protection extends to this ancient colony.

In the markets of Spain, Portugal and Brazil, our staple export is subject to enormous rates of duty, and in the latter country a still further increase appears to be contemplated. If firmly urged by your Majesty's Government we should have confident hope that on the occasion of new treaties with these powers, arrangements may be effected less detrimental to our interests.

We humbly submit the premises for your Majesty's consideration. And we pray that such assistance may be extended to us as will relieve the Colony from its pecuniary embarrassment, and that such other measures may be adopted as will avert the ruin which further neglect of this loyal dependency must inevitably, and at no distant period, occasion.

On motion of Mr. Shea, seconded by Mr. Job.

*Resolved*, That the said Address be adopted and engrossed.

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*Extracts from the journal of the legislative assembly of Nova Scotia, 1853.*

*Registrar of the Vice-Admiralty Court to Provincial Secretary Howe.*

REGISTRY OF THE COURT OF VICE ADMIRALTY AT HALIFAX,  
August 12, 1852.

SIR: I have the honor to enclose herewith, for the information of his excellency the lieutenant-governor, a return of the vessels prosecuted in this court, belonging to American citizens, and seized for fishing, or preparing to fish, in British waters, from 1817 to 1821, both inclusive. Also a return of the number of American vessels seized for violation of the convention made between the government of Great Britain and the United States of America, in the year 1818, and prosecuted in this court, with the dates of their seizure and condemnation or restoration. Amongst the papers in the cases of the *Betsy* and *Polly*, is a notice endorsed on the fishing licenses of these vessels, of which I beg permission to enclose a copy.

I have the honor to be, Sir, Your obedient servant,

SCOTT TREMAIN, *registrar*.

To the honorable JOSEPH HOWE,  
*Provincial secretary, &c., &c., &c.*

[Inclosure No. 1.]

## COURT OF VICE ADMIRALTY AT HALIFAX.

A return of American vessels seized and prosecuted in this court, for fishing, or preparing to fish, within British waters, from 1817 to 1821. Also a return of the number of American vessels seized for violation of the convention made between the governments of Great Britain and the United States of America, in the year 1818, and prosecuted in this court, with the dates of their seizure and condemnation or restoration.

Name of vessel.	Date of seizure.	Condemnation or restoration.
Schr. John, (seized by H. M. S. Dee, at Ragged Island.)	5th June, 1817	Restored.
General Jackson	" " "	"
Isabella	" " "	"
Enterprise	" " "	"
Exchange	" " "	"
Defiance	" " "	"
Lucy	" " "	"
Welcome Return	" " "	"
Superb	" " "	"
Random	" " "	"
Native	" " "	"
Rising Sun	7th " "	"
Jefferson	" " "	"
Oliver Cromwell	" " "	"
Nine Sisters	" " "	"
Rambler	" " "	"
Violet	" " "	"
Fox	16th " "	"
Boat Hake	" " "	"
Prudence	" " "	"
Sally	28th " "	"
Raven	8th July, 1818	24th August, 1818.
Nabby, (seized by H. M. S. Belette, off Pope's Harbor, coast of Nova Scotia, claimed, defence put in.)	28th July, 1818	24th August, 1818.
Washington, (seized by H. M. S. Saracen.)	" " "	24th August, 1818.
* Betsey, (seized and sent in to Halifax.)	August, "	Restored.
Polly, (seized on south side Bay of Fundy.) N. B.—Similar indorsement to above on the "Polly's" license.	June, 1821	"
Nancy	27th May, 1821	22nd August, 1821.
Rising States, (seized at Gulliver's Hole, Bay of Fundy.)	26th May, 1821	" " "
Golden Rule, (seized by government brig Chebucto.)	1st July, 1821	Restored.
Milo, (seized at Gulliver's Hole, Bay of Fundy, by H. M. S. Bellette.)	27th May, 1821	21st August, 1821.
Caroline, (claimed.)	9th June, 1821	Restored.
White Oak	" " "	21st August, 1821.
Hero	1st June, 1838	28th Jan'y. 1839.
Combine	1st Novr. 1838	28th Jan'y. 1839.
Shetland	4th June, 1839	8th July, 1839.
Java	May, 1839	5th August, 1839.
Independence	26th May, 1839	5th August, 1839.
Magniola	25th May, 1839	5th August, 1839.
Hart	May, 1839	5th August, 1839.
Battelle	June, 1839	8th July, 1839.
Hyder Alley	14th " "	8th July, 1839.
Eliza	14th " "	8th July, 1839.
May Flower	June, 1839	Restored.
Papineau	2nd " 1840	10th July, 1840.
Mary	2nd " 1840	10th July, 1840.
Alms	11th Sep. 1840	8th Decr. 1840.
Director	18th Sep. 1840	8th Decr. 1840.
Ocean	1st Oct. 1840	8th Decr. 1840.
Pioneer	6th May, 1841	18th Aug. 1841.
Two Friends	20th May, 1841	Restored.
Mars	20th Sep. 1841	2nd Nov. 1841.
Egret	20th Sep. 1841	2nd Nov. 1841.
Warrior	13th Oct. 1841	9th Nov. 1841.
Hope	13th Oct. 1841	Restored.
May Flower	13th Oct. 1841	7th Dec. 1841.
Washington	7th May, 1843	1st Aug. 1843.
Hyades	10th May, 1848	5th Sep. 1848.
Leonidas	11th May, 1849	29th June, 1849.
Harp	15th Sep. 1850	28th Jan. 1851.
Tiber	29th Oct. 1851	"

\* Indorsement on schooner *Betsy's* fishery license before mentioned.



It is hereby notified, that it is the earnest desire of rear admiral Sir David Milne, commander in chief of his majesty's ships and vessels in North America, and in the lakes of Canada, in endeavouring to preserve the maritime rights of his majesty from infringement, to avoid, as much as possible, subjecting the vessels and people of the United States of America engaged in the fisheries to any loss or interruption which they have made themselves liable as to the just rights which belong to the maritime dominions of his majesty in North America. You are therefore allowed to pursue your voyage without further detention, taking notice, however, that if you are again found trespassing on his majesty's rights you cannot expect to receive further indulgences; and you are requested to notify to the vessels of your nation, as far as in your power, to avoid interfering with these fisheries which exclusively appertain to his majesty's subjects, as they will be hereafter proceeded against as the law directs. Given under my hand at Halifax, 58 year of H. M. reign, 1818.

(Signed)

DAVID MILNE,  
Commander in chief.

SCOTT TREMAIN, registrar.

Dated August 12, 1852.

[Inclosure No. 2.]

## REGISTRY OF THE COURT OF VICE ADMIRALTY AT HALIFAX.

Abstract shewing the places at which the respective American vessels herein mentioned were seized for infraction of fishing laws, taken from affidavits and examinations on file in this court.

Name of vessel.	Date of seizure.	Where seized.
Schr. John.....	5th June, 1817	These vessels were seized while at anchor in Ragged Island harbor.
General Jackson.....	" " "	
Isabella.....	" " "	
Enterprise.....	" " "	
Exchange.....	" " "	
Lucy.....	" " "	
Welcome Return.....	" " "	
Superb.....	" " "	
Random.....	" " "	
Defiance.....	" " "	
Native.....	" " "	Seized at the entrance of Ragged Island harbor.
Rising Sun.....	7th " "	Seized at Cape Negro.
Jefferson.....	" " "	Seized at the mouth of Cape Negro harbor.
Oliver Cromwell.....	" " "	
Nine Sisters.....	" " "	Seized while at anchor under C. Negro, about one and a half miles from land.
Rambler.....	" " "	Seized at Cape Negro harbor.
Violet.....	" " "	Seized going out of C. Negro harbor.
Fox.....	16th " "	Seized in Cape Negro harbor.
Boat Hake.....	" " "	In the basin of Annapolis, lying to under a foresail.
Prudence.....	" " "	At Gut of Annapolis, within half a mile of the land.
Sally.....	28th " "	Seized in the Bay of Fundy, one mile distant from Trout Cove.
Raven.....	8th July, 1818	In Mackarel Cove, Beaver Island, lying at anchor.
Nabby.....	28th July, 1818	Off Pope's harbor.
Washington.....	" " "	In Lipscomb harbor.
Betsey.....	Aug. "	ditto
Polly.....	June, 1821	At Gulliver's Hole, Bay of Fundy.
Nancy.....	27th May, 1821	
Rising States.....	26th May, 1821	
Golden Rule.....	1st July, 1821	
Milo.....	27th May, 1821	
Caroline.....	9th June, 1821	
Hero.....	1st June, 1838	
Combine.....	1st Nov. 1838	At Turney's Cove, in the Gut of Canso.
Shetland.....	4th June, 1839	Whilst under sail at the distance of about three quarters of a mile from the western shore, Gut of Canso.
Javam.....	May, 1839	Yankee Harbor, White Head.
Independence.....	26th May, 1839	At the north-east harbor of Tusket, for fishing off Tusket harbor.
Magnolia.....	25th May, 1839	Fishing at Tusket Island.
Hart.....	May, 1839	At Tusket Harbor.
Battelle.....	June, 1839	
Hyder Ally.....	14th June, 1839	At Beaver Island, for setting nets at Strait of Canso.
Eliza.....	14th June, 1839	
Mayflower.....	June, 1839	At Ellenwood Harbor, Tusket Island, for fishing abreast of Friar Head, within a line drawn from Margurite Island to Cheticamp Point.
Papineau.....	2nd June, 1840	
Mary.....	2nd June, 1840	
Director.....	18th Sep., 1840	
Ocean.....	1st Oct. 1840	

Abreast of Friar Head or Point near Margaree, in Cape Breton, within the headland of Cheticamp, within two miles of the coast.

Name of vessel.	Date of seizure.	Where seized.
Schr. Alms.....	11th Sep. 1840	Within one mile distance from the shore of Inverness Cape Breton.
Pioneer.....	6th May, 1841	Between Petite Passage and Sandy Cove.
Two Friends.....	20th May, 1841	One mile off Yankee Harbor, county of Guysboro'.
Mars.....	20th Sep. 1841	Off Margaree Island, one mile from shore.
Egret.....	ditto.	Off north side Sable Island.
Warrior.....	13th Oct. 1841	Within Margaree Island, Cape Breton.
Hope.....	13th Oct. 1841	
Mayflower.....	13th Oct. 1841	
Washington.....	7th May, 1843	Whilst at anchor in the Bay of Fundy, about five or six miles from the land.
Argus* (condemned 5th Nov. 1844)	6th Aug. 1844	Off Cape Ann, eight miles from shore.
Hyades.....	10th May, 1848	In the Bay of Fundy, off Gulliver's Hole.
Leonidas.....	11th May, 1849	At the mouth of Liscomb Harbour.
Harp.....	15th Sep. 1850	Within Margaree Island.
Tiber.....	29th Oct. 1851	About one and half miles off Coast of Cape Breton.

\* The following abstract is copied from an affidavit made by Phillip S. Dodd, seisor, dated 19th August, 1844.

"And the deponent saith, that he is now in charge of the schooner '*Sylph*,' employed by the government of this province for the protection of the trade of the province, and for the prevention of illicit trade. And the deponent saith, that on Tuesday, the sixth day of August instant, when the deponent was proceeding round the said island in the said vessel, in discharge of his duty, as seizing officer under the said commission, he saw a vessel at anchor and engaged in fishing off St. Ann's Bay—that deponent made for and hailed the vessel, and directed the master to send his boat on board, which was accordingly done—that when the deponent hailed the said vessel she was lying at anchor and actually engaged in taking fish, there being several lines over the vessel's side, and fish were hauled in after he hailed—that the master of the said vessel then came on board the *Sylph* in his own boat, when the deponent ascertained that the said vessel was an American fishing vessel, called the *Argus*, of about forty or fifty tons burthen, of and belonging to Portland, in the State of Maine, in the United States of America, and that the master's name was William Doughty—and the deponent saith, that when the master had boarded the *Sylph* and the deponent had ascertained the character of the vessel, the deponent pointed out to him the headlands of Cape North and Cow Bay, and informed him that he was fishing on grounds prohibited by the said treaty—and the deponent saith, that the said master freely admitted that the place where he was then fishing was inside of a line drawn from the headlands of Cape North and Cow Bay—and the deponent saith, that he informed the said master that his vessel and cargo were liable to seizure, and that deponent accordingly seized the said vessel, her tackle, apparel, furniture, and cargo, for an infringement of the said treaty—and the deponent saith, that the place where the said vessel was at anchor and fishing, when deponent seized her, was off St. Ann's Bay, on the eastern coast of the island of Cape Breton, about eight miles from the nearest land, but at least two miles within the headlands of Cape North and Cow Bay."

SCOTT TREMAIN, *Regr. C. V. A.*

*Vice-Admiral Seymour to Lt. Governor Le Marchant.*

BASILISK, AT P. E. ISLAND, 23rd August, 1852.

SIR: I have the honor to forward Your Excellency a copy of Statements made to the Officers of the hired armed Tender "*Telegraph*" as I think it right you should be informed of the notices which are said to have been issued to the Fishing Vessels of the United States, by the Commanders of the Provincial Vessels employed for the protection of the Fisheries; and I am not aware of the lines therein described having been sanctioned by authority.

I have, &c.

G. F. SEYMOUR,  
*Vice-Admiral, &c., &c., &c.*

His Excellency SIR GASPARD LE MARCHANT, &c., &c., &c.



[Inclosure.]

*Statements of the Masters of Four American Fishing Vessels, touching the information received by them from the Commanders of the Provincial Vessels Halifax and Responsible, respecting the limits within which they were allowed to fish.*

1. R. W. Armistead, Master of the United States schooner *Angenora*, of Frankfort, states about the 27th of July, he went on board the *Responsible*, and was informed by her Commander, that if he found him fishing within three marine miles of a line drawn from Cape Gaspé to North Point of Prince Edward's he would seize his vessel.

2. Stephen Morey, master of the U. S. schooner *R. Roster*, of Deer Island, stated that he went on board "*Halifax*" laying in McNair's Cove, Gut of Canso, about the 23rd of July, and was informed by the Commander of that vessel, that his orders were to draw a line from Port Hood to the East Point of P. E. Island, thence to the North Point of P. E. Island, thence to Birch Point on Mission Island, and that he would seize any vessels that he found fishing within three marine miles of that line.

3. William Page, Master of the U. S. schooner *Paragon*, of Newburyport, stated to Mr. Sutton, that on or about the 23rd of July he was informed by the Commander of the Schr. *Responsible* that he should draw a line from headland to headland on any part of the coast of Nova Scotia, and seize any vessel that he found fishing within three marine miles of such a line.

4. Stephen Randall, Master of the U. S. Schr. *Montezuma*, states that on or about 20th July, whilst laying in Pirates Cove, Gut of Canso, he met the Master of the *Halifax*, (James Laybold), who informed him that he was not allowed to fish within three marine miles of a line drawn from the North Cape to Cape Gaspé, and that he would seize his vessel if he found him fishing within that distance of that line.

Several other Masters of American vessels corroborated these statements, but I did not think it necessary to take the particulars.

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*Lieutenant Governor Le Marchant to Vice Admiral Seymour.*

GOVERNMENT HOUSE,  
*Halifax, August 26, 1852.*

SIR: Referring to your Excellency's letter of the 23rd instant, which, with its enclosures, I have had the honor to receive, I beg to remind you that copies of the Instructions under which the Captains of the Provincial Cruisers are acting, are in your Excellency's possession. On reference to these you can satisfy yourself that they contain no authority whatever to act upon our construction of the Convention, except where Vessels are actually found fishing within three marine miles of the shore.

Your Excellency may be assured that the Provincial Government have every desire to avoid controversy on the point now under discussion by the Governments of Great Britain and the United States.

Copies of the statements made by the Masters of the American Fishing Vessels have been sent to the Captains of the *Halifax* and *Responsible*, and I will communicate with you again when I have their explanations on each representation respectively that the American Masters have made.

I have, &c.

(Signed) J. GASPARD LE MARCHANT.

Vice-Admiral Sir G. F. SEYMOUR, &c., &c., &c.

*Provincial Secretary Howe to Captain Laybold.*

PROVINCIAL SECRETARY'S OFFICE,

*Halifax, August 26, 1852.*

SIR: I am commanded by the Lieutenant Governor, to call your attention to the enclosed copy of a Despatch from Vice Admiral Sir George F. Seymour, with statements of certain Masters of American Fishing Vessels enclosed. You will, without delay, furnish me with such explanation as will enable the Lieutenant Governor to judge how far the conversations which are made matter of complaint, have been accurately reported. And, in the meantime, you will take care to detain no vessel which is not found trespassing *within three miles of land*.

I have, &c.,

(Signed.) JOSEPH HOWE.

Captain J. LAYBOLD, P. R. C., *Halifax*.

(A similar letter addressed to Captain P. Dodd, P. R. C. "*Responsible*." )

*Captain Daly to Provincial Secretary Howe.*

PROVINCIAL SCHOONER "DARING,"

*Gut of Canso, August 28th, 1852.*

SIR: On my arrival here this morning from Port Hood, I found an American fishing Schooner taking on board Empty Barrels for her fishing Voyage, and as the thing is becoming quite a practice, and as the question has been several times asked me if it can be done, to which I declined giving any answer until I have the opinion of the Government on the subject.

I have been told that more than one American Vessel has landed a load of Herrings from Magdalen Islands in the Strait, and fitted out again for the mackerel fishery.

Our fishermen complain that American vessels, with all their other advantages, should be allowed to fit out so convenient to the fishing ground. As the hook and line fishery has not as yet commenced on Cape Breton Shore, I will await your answer in visiting all parts of the Strait and Arichat, calling at Plaister Cove on Mail day, where you will please direct.

I am, Sir, Your most obedient Servant,

JAMES DALY.

The Honorable JOSEPH HOWE,

*Provincial Secretary, Halifax.*



*Captain Dodd to Provincial Secretary Howe.*

PORT HOOD, CAPE BRETON, August 29, 1852.

SIR: Since my report of the 23rd I have been down the eastern shore, and returned to Port Hood on the 29th. On Friday last I had the honor of seeing the Admiral on board H. M. S. *Basilisk*, off Port Hood Island, and received from him a copy of two statements made by American fishermen, with reference to information said to have been given by me.

1st. R. W. Armistead, Master of the U. S. Schr. "*Aganora*," of Frankfort, states that, about the 27th of July last, he went on board the Schr. "*Responsible*," and was informed by her Commander, that if he found him fishing within three marine miles of a line drawn from Cape Gaspe to the north point of Prince Edward Island, he would seize his vessel.

2nd. William Page, Master of the U. S. Schr. "*Paragon*," of Newburyport, stated to Mr. Sutton, that, on or about the 23rd day of July, he was informed by the Commander of the Schr. "*Responsible*" that he would draw a line from headland to headland on any part of the Coast of Nova Scotia, and seize any vessel he found fishing within three marine miles of such a line.

These statements I have copied verbatim, and although not called upon to answer them, I still think it my duty to do so. The first is altogether false; there has not been any American Captain on board the Schr. "*Responsible*" since I have had charge of her, except a Captain Dixon, of the Schooner *Empire*, which vessel was repairing at that time in the Strait of Canso; and again, on the twenty-seventh of July, the Schooner *Responsible* was coming up from Margaree Island, both which facts can be attested to if required by half the Ship's Company; and as I had nothing to do at Prince Edward's Island, it is scarcely probable, I should have made any Statement with reference to any lines to be drawn on that Coast.

The assertion of William Page, Master of the Schooner *Paragon*, may be correct, for I did to several American Captains (and he may have been one of them) say, that I should draw a line from the headlands of the Coast and Bays of Cape Breton, and seize all American Vessels found trespassing within three marine miles of such line; and such are my intentions until further orders, as I consider myself bound to do so by my instructions, in which I am referred to the Convention of 1818; and as it would be great presumption in me to attempt to put any construction on that Treaty, I feel myself bound by the opinions of the Queen's Advocate, and Her Majesty's Attorney General, given in 1841; and also by the result of the trial of the American Schooner *Argus*, which vessel was seized by me within a line drawn from Cow Bay Head to Long Point, near Cape North, Cape Breton, and condemned.

As the *Halifax* and *Daring* are about this part of the Coast, I shall proceed through the Strait of Canso, and down the South Shore of Cape Breton, and return by Cape North.

I have the honor to remain, Sir,

Your obedient Servant,

P. S. DODD.

The Honorable the PROVINCIAL SECRETARY, &c., &c., &c.

*Provincial Secretary Howe to Captain Daly.*PROVINCIAL SECRETARY'S OFFICE, *September 1st, 1852.*

SIR: Referring to your Letter of the 25th ult., I beg to acquaint you, that American Vessels which have regularly entered at a Port where there is a Revenue Officer, can land fish or purchase barrels, but they have no right to an irregular use of this privilege at places where no Officer is stationed.

I am, Sir, Your Obedient Servant,

JOSEPH HOWE.

CAPT. DALY, *Commanding Schr. Daring.**Captain Dodd to Provincial Secretary Howe.*PORT HOOD, CAPE BRETON, *September 1st, 1852.*

SIR: I have the honor to acknowledge the receipt of your letter, dated 26th August, enclosing a copy of a Despatch from Vice Admiral Sir George F. Seymour, with statements of certain Masters of American Fishing Vessels, a copy of which statements was handed to me by the Vice Admiral on the Twenty-seventh of August, and which I answered on the Twenty-ninth.

The orders not to detain Vessels unless found trespassing within three miles of land shall be strictly attended to.

I have, &c.,

P. S. DODD.

The Honorable the PROVINCIAL SECRETARY.

*Extracts from the journal of the legislative assembly of Newfoundland, 1864.**Duke of Newcastle to Governor Bannerman.*

*Copy of a despatch from the secretary of state for the colonies in reply to a request from the governor that the copy of a draft bill for regulating the fisheries may be looked over, and any parts pointed out, such as probably might not be sanctioned by the Crown.*

DOWNING STREET, *3d August, 1863.*

SIR: I have the honor to acknowledge the receipt of your despatch No. 34 of the 29th June, enclosing a printed copy of the proceedings of a committee appointed to enquire into the state of the fisheries of Newfoundland, together with a draft bill framed with a view to their proper regulation, and requesting that the provisions of this draft bill may be looked over, and any parts of it pointed out, such as probably might not be sanctioned by the Crown if it were passed.

2. I apprehend that it is not your expectation that I should express an opinion respecting the practical modes of conducting those fisheries, it being plain that the inhabitants of Newfoundland are or ought to be best capable of judging what regulations are calculated to increase the productiveness of their own seas, and with respect to imperial interests I do not think it desirable to anticipate that close inquiry to which any act passed upon this matter must be subjected in order to ascertain that it does not infringe upon the right guar-



anted to foreigners or run counter to any principle of imperial policy.

3. The observations which suggest themselves to me, however, on the perusal of the draft bill are—

1st. That if any misconception exists in Newfoundland respecting the limits of the colonial jurisdiction, it would be desirable that it should be put at rest by embodying in the act a distinct settlement that the regulations contained in it are of no force except within three miles of the shore of the colony.

2nd. That no act can be allowed which prohibits expressly, or is calculated by a circuitous method to prevent, the sale of bait.

3rd. That all fishing acts shall expressly declare that their provisions do not extend or interfere with any existing treaties with any foreign nation in amity with Great Britain.

4th. That, in any part of the colonial waters, it would be highly unjust and inconvenient to impose upon British fisherman restrictions which could not, without violating existing treaties, be imposed upon foreigners using the same fisheries. On this point, however, I would refer you to my despatch, marked “confidential,” of the 2nd of February.

I have, &c., &c.

NEWCASTLE.

Governor Sir A. BANNERMAN.

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*The Marquis of Salisbury to M. Waddington.*

FOREIGN OFFICE, July 9, 1889.

M. L'AMBASSADEUR: In the note which I had the honour of addressing to your Excellency on the 28th March last, relative to the question of the lobster fishery in the waters of Newfoundland, I stated that I proposed to address to you a further communication in reply to the observations contained in your note of the 7th December on the general subject of the Newfoundland fisheries.

The note in question treats of the claim of Messrs. Dupuis-Robial and Besnier for compensation on account of the diminution of their catch of fish, which they attribute directly to the use of cod-traps by British fishermen.

In my note of the 24th August, 1887, relative to this claim, I had stated that the right of fishery conferred on the French citizens by the Treaty of Utrecht did not take away, but only restricted during a certain portion of the year and on certain parts of the coast, the British right of fishery inherent in the sovereignty of the island. And in my subsequent note of the 28th July last I observed that the right of British subjects to fish concurrently with French citizens has never been surrendered, though the British fishermen are prohibited by the second paragraph of the Declaration of Versailles from interrupting in any manner by their competition the fishery of the French during the temporary exercise of it which is granted to them.

In your note of the 7th December your Excellency meets these arguments by asserting that the French had always had the exclusive right of fishery in virtue of their sovereignty over Newfoundland. That when that sovereignty was transferred to England by the Treaty of Utrecht, the right of fishery reserved to subjects of

the King of France on a portion of the coast necessarily remained an exclusive right in the absence of any express provision to the contrary. Further, that in the negotiations at Versailles in 1782-83 the English negotiators, by an appeal to the moderation of the Court of Versailles, succeeded in obtaining, not any admission of a concurrent right of fishery, but an abandonment by France of fishing rights on part of the coasts on which British subjects had encroached, in exchange for exactly similar rights on an equivalent portion of the coast elsewhere. That in the negotiations for the Peace of Amiens of 1802 the Cabinet of Paris had thought it would be desirable to establish the French right to exclusive fishery by a modification of Article XIII of the Treaty of Utrecht, but that Mr. Fox did not consider such an amendment opportune, and urged that it would be sufficient to return purely and simply to the text of 1783, as the British Government had never questioned the French right to exclusive fishery.

This train of reasoning presents a historical view of the subject which is entirely at variance with the information in the possession of Her Majesty's Government. I have thought it would contribute to the elucidation of the subject that the several points which I have briefly recapitulated above should be examined in detail by the light of the authentic records at the disposal of this Department and the Colonial Office, and the result of this examination has been embodied in a Memorandum of which I inclose copies, and to which I request your Excellency's attention.

You will find what appears to Her Majesty's Government to be indisputable evidence that the sovereignty of Newfoundland has from the earliest times belonged to the British Crown, and that the interests of France were limited to the possession of Placentia, and to temporary occupancy by conquest or settlement of certain portions of the adjacent coast. All these interests were abandoned by the Treaty of Utrecht, which stipulated that no claim of right should ever henceforward be advanced on behalf of France, and that it should be allowed to her subjects to catch fish and dry them only on land on a certain specified portion of the coast. The concurrent right of British subjects to fish off this part of the coast was undoubtedly asserted and put in practice subsequent to the Treaty, and not later than 1766, and a short time afterwards it began to give rise to repeated complaints from the French Government, not on the ground that it was in itself contrary to the Treaty, but because of the manner in which it was exercised, which was said in many cases practically to derogate from and annul the liberty of fishery accorded to the French. The arrangements made at Versailles in 1783 were not obtained by appeals to the moderation of the French Government with the view of obtaining concurrent rights of fishery for British subjects, but were the outcome of negotiations in which the French Plenipotentiary endeavoured, but unsuccessfully, to obtain the explicit concession of an exclusive right of fishery for the French.

It is no doubt by an accidental error merely that Mr. Fox, who was Secretary of State during the latter portion of these negotiations, is mentioned by your Excellency as having given certain assurances during the later negotiations for the Treaty of Amiens in 1802, when he was not a member of the Government. But I have been unable to discover, either in the instructions of Lord Hawkes-



bury in this latter period, or in the Reports of Lord Cornwallis, who was the British Plenipotentiary, any indication that either of them gave any assurance whatever that the British Government had never questioned the exclusive character of the right of fishery accorded to the French under the Treaty of Utrecht. Such a statement on their part would indeed have been in absolute contradiction to the facts.

The question therefore hinges mainly on the interpretation to be given to the arrangements made at Versailles in 1783, and on this point I must be permitted to invite special attention to paragraphs 29-38 of the Memorandum which I have the honour to inclose, and to refer your Excellency to Lord Palmerston's note to Count Sebastiani of the 10th July, 1838, of which your Excellency has only quoted a small, and that, as it seems to me, the least significant, portion.

For you will find, on reference to the original, that certain words have been omitted, in making the extract, which materially alter the sense, and that the privilege which, as Lord Palmerston states, "has, in practice, been treated by the British Government as an exclusive right during the period of the fishing season, and within the prescribed limits," is described by him as "a privilege which consists in the periodical use of a part of the shore of Newfoundland for the purpose of drying their fish;" while in the very next sentence Lord Palmerston goes on to say that "the British Government has never understood the Declaration to have had for its object to deprive British subjects of the right to participate with the French in taking fish at sea off that shore, provided they did so without interrupting the French cod fishery." A perusal of this passage of the preceding paragraph, and of those which succeed it, showing the grounds on which Lord Palmerston based his conclusion, will, I think, convince your Excellency that the arguments advanced in my previous communications are in consonance with the views which have always been expressed by Her Majesty's Government.

To turn to the more immediate object of this correspondence, the question of the injury said to be caused to the French fishery by the use of cod-traps by British fishermen, I have already had the honour of informing your Excellency that, pending the enforcement of the Act which has been passed by the Colonial Legislature for the entire suppression of these traps, special instructions have been issued to the British naval authorities which Her Majesty's Government trust will be effectual in preventing any undue interference by such engines with the fishery of French citizens. In this and in all other respects it is the earnest wish of Her Majesty's Government to do all in their power to insure the enjoyment by the French fishermen of the rights given to them under the Treaty and Declaration of 1783.

But I can only repeat that the claims preferred on account of Messrs. Dupuis-Robial and Besnier do not appear to Her Majesty's Government to be such as they can consent to entertain. These claims rest virtually on the fact that the amount of fish caught by the complainants was considerably below the average of former seasons, that they believe from hearsay evidence that British fishermen who used cod-traps in the vicinity were more successful, and that they attribute their own want of success to this cause, as they do not know to what else it could be attributable. It is admitted by some

of the deponents that they did not even apply to the British naval officers for the removal of any of the traps, as they did not think it would be of any use; by others that they did so apply, and that the traps were removed, though they assert that these were afterwards replaced, when apparently they took no further steps.

Her Majesty's Government have every wish that the assurances contained in the Declaration of 1783 should be punctually and completely fulfilled, but they cannot admit that there is anything in those assurances, however liberally they may be construed, which should involve liability for such a claim.

I have, &c.

(Signed)

SALISBURY.

[Inclosure.]

### *Memorandum.*

The French Ambassador, in his note dated the 7th December, 1888, reaffirms the French contention as to the exclusive character of the right of fishery enjoyed by French citizens on part of the Newfoundland coast, and again urges the claim for compensation preferred by Messrs. Dupuis-Robial and Besnier on account of the damage said to have been sustained by them through the use of cod-traps.

2. M. Waddington expresses surprise that Her Majesty's Government have now for the first time asserted the essential right of British fishermen to fish by the side of French subjects, and have alleged that this right has never been surrendered, and the French Ambassador assumes that this doctrine is based upon the silence of Article XIII of the Treaty of Utrecht. His Excellency also states that "le Traité (of Utrecht) laissait subsister pleinement quant à la pêche l'état de choses antérieur à 1713, c'est-à-dire, l'état en vigueur alors que les Français exerçaient la souveraineté territoriale. La France conservait le droit exclusif de pêche puisqu'elle l'avait toujours eu," and he further alleges that his "Gouvernement était donc fondé à croire . . . que le droit de la France sur la côte de l'Île de Terre-Neuve réservée à ses pêcheurs n'est autre chose qu'une partie de son ancienne souveraineté sur l'île qu'elle a retenue en cédant le sol à l'Angleterre, mais qu'elle n'a jamais ni infirmé ni aliéné."

#### *I.—State of Affairs prior to the Treaty of Utrecht.*

3. M. Waddington asserts that France retained ("conservait") the exclusive right of fishing, since she had always had it ("l'avait toujours eu"). But this cannot be a correct statement, for it appears that in the reign of King Charles I, and during the Commonwealth, if not to a later date also, the French were required to pay to England a tribute or tax of 5 per cent. for the privilege of fishing at Newfoundland, and of drying fish on the shore of the island.

4. He also asserts that the French right of fishing is part of the ancient sovereignty of France over the island, which she retained when ceding the soil to England, but which she has never weakened or alienated. It is evident that this statement also is inaccurate,



for the history of Newfoundland during the seventeenth century will be seen to be a record of repeated acts of dominion over the island exercised by England, who could not have accepted such a cession without thereby disavowing all her past acts.

5. It may be observed in passing (1) that if the present claim of exclusive fishing on the ground of ancient French sovereignty be disposed of, any argument for their exclusive fishing can only be based upon the terms of the Treaty; and (2) that the terms of that Treaty must be interpreted with reference to the existence of British sovereignty.

6. Her Majesty's Government are not aware that France ever possessed any recognized sovereignty over Newfoundland, and, as far as can be ascertained, this novel claim on the part of France is not only untenable in itself, but if inverted would be an accurate statement of the British rights. In order to dispose of this claim, it will be convenient to examine the state of things that actually existed prior to the Treaty of Utrecht.

7. Without going back to the title which England acquired to Newfoundland by right of prior discovery made by John Cabot in 1497, it may be observed that on the 5th August, 1583, Sir Humphrey Gilbert, acting under a Commission from the Queen of England, formally took possession of Newfoundland, on behalf of his Sovereign, in the presence of various persons, subjects of other nations, who happened to be there in pursuit of the fishery, and from whom he exacted tribute in acknowledgment of the Queen's rights.

8. During the interval from 1583 to 1713 England exercised continued acts of dominion over Newfoundland; grants of land were made by the Crown to individuals; settlement was encouraged; Courts of Justice were held (the first as early as 1615); Commissions were issued, and Regulations made for the government of the island, and of the fishermen resorting to it, as well as of the settlers established there; and eventually, in 1698, an Act of Parliament was passed (10 & 11 Wm. III, cap. 25) applying to the whole island, and the seas, rivers, and dominions thereunto belonging, and islands adjacent; such Act being principally an enactment by the Imperial Legislature of the Rules, Regulations, and Constitutions that had prevailed for some time.

9. The first section of this Act enacted that "no alien or stranger whatsoever (not residing within the Kingdom of England, the Dominion of Wales, or town of Berwick-on-Tweed) should at any time thereafter take any bait or use any sort of trade or fishing whatsoever in Newfoundland, or in any of the islands or places above mentioned.

10. The British sovereignty, formally established in 1583, and duly and effectively exercised afterwards, was also, it appears, recognized by France. Hatton and Harvey, in their "History of Newfoundland," p. 38, state that in 1635 the French obtained permission from the English to dry fish on the shores of Newfoundland on payment of a duty of 5 per cent. of the produce, and that in 1675 Charles II was induced to relinquish the duty of 5 per cent., which had been paid as an acknowledgment of British sovereignty.

11. Anspach, in his "History of Newfoundland" (second edition, 1827, p. 112) says: "According to l'Abbé Raynel, France, after the Agreement made with King Charles I in 1634, sent annually

her fishermen to Newfoundland, where they fished only on the northern part which they called Le Petit Nord, and on the southern point, where they had formed a kind of town upon the Bay of Placentia, which united all the conveniences that could be desired for a successful fishery." He adds at p. 93: "In the year 1675 the French King prevailed upon Charles II to give up the duty of 5 per cent."

12. It is also stated at paragraph 1666 of the published Calendar of State Papers, Colonial, America, and West Indies, 1661-68, that "from the first discovery of Newfoundland in 1496 till the Treaty of 1632 the French were not permitted to fish at Newfoundland or in any place on the main in America, but after that Treaty the French trading to Canada and Acadia presumed to make dry fish on Newfoundland; for prevention whereof Sir David Kirke was sent there Governor, in whose time every French ship trading or making dry fish there was forced to pay 5 or 10 per cent.; and in time of the late rebellion they were compelled to do the like."

13. Further, it is certain that in 1637, by letters patent dated 13th November of that year, "the whole continent, island, and region" of Newfoundland was granted in fee to the Marquis of Hamilton, the Earl of Pembroke, the Earl of Holland, and Sir David Kirke, and "that all other Kings, Princes, and Potentates, their heirs, allies, and subjects, may know our (the King's) just and undoubted right and interest in and to the said continent, island, and region of Newfoundland, and in and to all and every the islands, seas, and places to the same belonging," it was declared that there are to be levied from all strangers that make use of any part of the shore for drying fish "five fishes out of every hundred fish in the seas, rivers, or places aforesaid to be had or taken." The grantees were enjoined to see to the collection of this tribute, from which British subjects were exempt, being expressly given "free and ample liberty of fishing."

14. There is, in the published Calendar of State Papers, Domestic, under date the 16th May, 1639, a letter from Secretary Coke to Secretary Windebank, stating that the French Ambassador (M. Pomponne de Bellièvre, Seigneur de Grignon) had complained of an imposition laid on strangers by Sir David Kirke for fishing at Newfoundland. "A firm but fair answer is to be given, and the impositions laid by the French on the English merchants considered in justification."

15. The following is an extract from this letter of the French Ambassador, dated the 9th (19th) May, 1639:—

"L'on m'a aussi donné avis que les nommer (*sic*) Kerg avoient une patente du Roy de la G. B. pour lever quelque chose sur la pesche des morües, ce qu'ils se proposent de prendre non seulement sur les sujets du Roy de la G. B., mais generalement sur tous ceux qui irant pour faire cette pesche, ce qui seroit contraire à tout droit et à la liberté avec laquelle on en a usé jusques icy, ce qui fait que je m'imagine que le Roy de la G. B. ne l'entend pas ainsy et que personne autre que ses sujets ne se resoudra à le souffrir."

To which letter the following answer was returned, dated Newcastle, 26th (16th) May, 1639:—

"J'ay communiqué la vostre au Roy mon maistre, et vous en rends cette gracieuse responce sur chaque point." Then, after referring to various other matters, the following reply is made to the French



Ambassador's representations on the Fisheries question, quoted above:—

“Cuant a vostre derniere plainte, faite contre Kerg, pour lever quelque chose sur les estrangers pour la pesche en Terre Neufve; S. M. ne scait pas, en particulier, ce qui s’y est passé; c’est pourquoy elle vous en remet à son Conseil d’Estat demeurants à Londres pour y faire vostre remonstrance et recevoir la responce. Se promettant quant & quant de vous une bonne responce sur la plainte que mon collegue vous aura représentée, de la nouvelle levée faite en France sur nos marchans, en contravention des Traités, & qui semble porter une intention absolue de rompre ceste bonne intelligence que S. M. garde toujours soigneusement, & pour la conservation de laquelle ses Ministres travaillent incessamment.”

16. There is no doubt that subsequently, in 1662 (published Calendar of State Papers, Colonial, 1661–68, paragraphs 1729–32), shortly after the restoration of the Monarchy in England, the French, taking advantage of the English Government being fully occupied at home, proceeded, although the two countries were at peace, to fortify themselves at Placentia, to drive out the English settlers, and to issue Commissions to Governors purporting to exercise sovereignty over the whole of Newfoundland.

17. In 1666 and 1667 the French, who were then at war with England, strengthened their hold upon Placentia and the neighbouring coasts (Calendar of State Papers, paragraphs 1729–30; and it is stated by Hatton and Harvey, p. 39, that at one time they had established their dominion over a territory of 200 miles in extent. But this episode of the conflict was annulled, so far as any sovereign rights were involved, by Article XII of the Treaty of Peace concluded between Great Britain and France at Breda on the 21st July, 1667, in which the Most Christian King engaged to restore to the King of Great Britain all the islands, countries, fortresses, and Colonies which might have been conquered by the arms of the Most Christian King before or after the signing of that Treaty.

18. As proof of the continued and uninterrupted assertion of English dominion, it may be pointed out that King Charles II, on the 12th January, 1661, issued letters patent reciting the letters patent of 1637, and granting additional powers for regulating the Newfoundland fishery; and that on the 10th March, 1670, he made an Order in Council containing additional Regulations for the government of the fishery in Newfoundland, of which the 1st Article authorizes English subjects to fish in all waters, and to dry their fish on shore in any part of Newfoundland, as fully and freely as any of the subjects “of His Majesty’s Royal predecessors,” and of which the 2nd Article declares “That no alien or stranger be permitted to take bait, or fish in any of the rivers, lakes, creeks, harbours, or roads in Newfoundland between Cape Race or Cape Bona Vista, or in any of the islands thereunto adjoining.”

19. The French had, it will be seen, forcibly possessed themselves of parts of the English Island of Newfoundland in time of peace, which they continued to hold, but without permission from England.

In any case, such possession was not considered as implying an admission of French sovereignty over any portion of the island, for, on the outbreak of hostilities after the accession of William III, the King, in his declaration of war, 7th May, 1689, stated:—

"It is not long since the French took licences from the English Governor of Newfoundland to fish in the seas upon that coast, and paid a tribute for such licences as an acknowledgment of the sole right of the Crown of England to that island; and yet of late the encroachments of the French upon our said island, and our subjects' trade and fishery, have been more like the invasions of an enemy than becoming friends, who enjoyed the advantages of that trade only by permission."

20. It is believed that after the Treaty of Ryswick, by which that war was terminated in 1697, but in which Newfoundland is not named, while it specifically deals with places in Hudson's Bay which were to be left in possession of the French, the French retained possession of Placentia and any other places occupied by French subjects; but that no acknowledgment of French sovereignty can be inferred from such circumstance is abundantly proved by the fact that the English Parliament in the following year, 1698, passed the Act, which has been before referred to (paragraph 8), applying to the whole of Newfoundland, and forbidding aliens to fish or trade. It is difficult to imagine any more formal assertion of the sovereignty of the English Crown.

## II.—*Language of the Treaty of Utrecht.*

21. The documents cited above effectively dispose of any supposed admission of French dominion prior to the Treaty of Utrecht. The language employed in that Treaty will be found to be such as to confirm the absence of any such previous admission, and, even if any admission of the kind had been made, to render it absolutely nugatory.

22. It will be found that in the Preliminary Treaty signed at London on the 8th October, 1711, the VIIth Article runs thus: "L'Ile de Terre-Neuve, la Baie et le Détroit de Hudson seront rendus à l'Angleterre," thus placing Newfoundland on the same footing as places where British sovereignty had unquestionably existed, but which, having been captured by the French, and subsequently recaptured by the English, had again been placed in possession of the French by the Treaty of Ryswick.

23. The language of the Treaty of Utrecht follows the same classification as the Preliminary Treaty. The Xth Article of the Treaty simply provides for the restoration to England, to be possessed in full right for ever, of the Bay and Straits of Hudson, with all lands, &c., belonging thereunto, "which are at present possessed by the subjects of France." While in the XIIth Article, however, it is stipulated that the French King shall deliver solemn and authentic instruments, from which it shall appear "that certain islands and places which had previously been French," together with the "'dominion,' propriety, and possession" thereof, "and all right whatsoever by Treaties or by any other way obtained by the Crown of France or its subjects, are yielded and made over to the Queen of Great Britain, and in such ample manner and form that the French shall thereafter be excluded from all kind of fishing on the coast of Nova Scotia." Thus, British territory previously seized by France, and left to her by Treaty, is "restored;" while territory, of which the previous dominion of France was not disputed, is ceded by the words, "yielded and made over," and the cession is to be evidenced by solemn and authentic instruments.



24. But the XIIIth Article, which treats of Newfoundland, follows rather the model of the Xth than of the XIIth Article. There is no question of instruments of transfer, and no mention is made of the dominion of France in regard to Newfoundland; but only that Newfoundland, with the islands adjacent, "shall from this time forward belong of right wholly to Britain" ("appartiendra désormais et absolument à la Grande-Bretagne"), and to that end Placentia and whatever other places are in possession of the French "shall be yielded and given up" ("et à cette fin le Roi Très Chrétien fera remettre à ceux qui se trouveront à ce commis en ce pays là dans l'espace de sept mois à compter du jour de l'échange des ratifications de ce Traité ou plus tôt si faire ce peut, la ville et le fort de Plaisance, et autres lieux que les Français pourraient encore posséder dans la dite île"); and the French King, his successors and subjects, shall not "lay claim to any right to the said island or islands, or to any part of it or them" ("sans que le dit Roy Très Chrétien, ses héritiers et successeurs, ou quelques-uns de ses sujets, puissent désormais prétendre quoique ce soit et en tel temps que ce soit, sur la dite Isle et les Isles adjacentes en tout ou en partie"). This is the language of withdrawing a claim, not of ceding the dominion of a territory; the renunciation of all rights is absolute, and even more emphatic in the French ratification than in the English version of the Treaty; and it may further be noted that this Article proves that the French at that time only claimed to be in possession of Placentia and other unnamed places, not of the whole island, of which M. Waddington now claims that they had the sovereignty.

25. Her Majesty's Government consider that the XIIIth Article must be read as an admission of the title previously existing in England, including control of the fishery in territorial waters; so that when the Article proceeds to deal with fishery by the French, it employs apt words of concession by the Sovereign Power; "*it shall be allowed* to the subjects of France to catch fish, and to dry them on land, in that part only and in no other besides that," &c. This is the language of concession on the part of England, not of reservation on the part of France; and it seems clear that, under the Treaty, French fishermen only obtained the privilege of fishing side by side with British subjects, whose right was derived not from Treaty, but from the British sovereignty, which had then existed for exactly 130 years.

26. This is the natural and common-sense construction of the Article, while the French contention can only be accepted on the supposition that the framers of the Treaty, who used precise and accurate language for the cession effected by the XIIth Article, used vague and indefinite language for the cession effected by the XIIIth. But it seems incredible that writers who so carefully excluded the French from the fisheries of Nova Scotia should not have thought it necessary to be equally careful (if that had been their meaning) to exclude the English from fishing on part of the coasts of Newfoundland, especially as they had previously declared the whole island to belong of right to England, a declaration which, according to public law, would necessarily include the territorial waters of the whole.

27. Again, during the negotiations at Utrecht, Spain laid claim to fish as of right in the waters of Newfoundland, and the Treaty between England and Spain contains an express renunciation of such claim.

If the French had really had or retained any sovereignty in those waters, the renunciation by Spain would more properly have been given to France instead of to England; and its presence in the English Treaty furnishes additional evidence against the present claim of France.

28. But it is in reality unnecessary to go further than the text of the Article itself. It assured to Great Britain the complete dominion of Newfoundland, with the adjacent islands, and it would have been absurd to state that the subjects of the Power possessing the sovereignty of the island should have the right to fish in its territorial waters. If any such stipulation had been necessary in regard to fishery, it would have been equally necessary to insert every other elementary right which sovereignty carries with it. Moreover, the Article contained a most absolute renunciation for the future of all rights on the part of France. And, accordingly, in the Treaty of Paris of 1763 (Article V) the French fishery is spoken of not as a *right* but as a *liberty*: "Les sujets de la France auront la liberté de la pêche et de la sécherie, sur une partie des côtes de l'Ile de Terre-Neuve, telle qu'elle est spécifiée par l'Article XIII du Traité d'Utrecht, lequel Article est renouvelé et confirmé par le présent Traité, à l'exception de ce qui concerne l'Ile du Cap Breton, &c."

### III.—*State of Affairs subsequent to the Treaty of Utrecht.*

29. As a matter of fact, there can be no doubt whatever that the concurrent right of fishery by British and French subjects was exercised in the interval between the Treaty of Utrecht and the negotiations of Versailles, inasmuch as, from 1769 onwards, the method of its exercise gave rise to frequent complaints on the part of the French Government. They urged that by permanent fishing establishments formed by British subjects along the shore the French were practically ousted from the enjoyment of the liberty conceded to them. It appears on reference to the discussions which took place on this subject in 1776 (at a time when the British Government were particularly anxious not to give France any unnecessary cause of offence), that after M. de Guines, the French Ambassador in London, had made a proposal for exclusive rights of fishery which the British Government had felt compelled to reject, Lord Stormont, then British Ambassador at Paris, was instructed to treat the matter with the Comte de Vergennes. The latter, in the conversations which followed, frankly admitted that the Treaty of Utrecht gave to Great Britain the full sovereignty over the island: he said that to contend that the Treaty gave to France an exclusive right of fishery would be to put on it a strained construction; but he laid down the principle that Treaty stipulations should be liberally interpreted, and that the rights of fishery conceded to the French on certain portions of the shore should not be annulled in practice by prior occupation on the part of British fishermen.

30. The English Ambassador, on his side, explained that it was impossible for his Government to order the removal of the sedentary British establishments (to which, however, they were in principle as much opposed as the French), because these had existed prior to the Treaty of Utrecht, as appeared by a Charter granted by the English Crown in 1610. He pointed out that the French system of bounties,



which gave their fishermen a favoured position as compared with the British, lay at the root of most of the trouble that had arisen. At the same time, he communicated a copy of fresh Royal instructions to the Governor of the Colony "to use his utmost vigilance and authority to prevent our subjects from taking any exclusive possession whatever, as private property, of any lands, rivers, or islands in the northern parts of Newfoundland between Bonavista and Point Riche, or from making any settlements or forming any establishments there, which may in any degree have the consequence to prejudice the fisheries of the subjects of France, . . . or to render ineffectual the instructions that ships of both nations should choose their stations as they respectively arrive."

These instructions were accepted by the Comte de Vergennes as satisfactory.

#### IV.—*Negotiations of Versailles, 1782.*

31. It would seem, further, that the reference by M. Waddington to the negotiations of 1782 is inaccurate. His Excellency states: "Les négociateurs Anglais . . . firent appel aux sentiments de modération de la Cour de Versailles, et sans obtenir rien qui ressemblât à un droit concurrent, obtinrent que la France renoncerait à la partie des côtes envahies et accepterait en dédommagement une étendue équivalente de territoire riverain à exploiter," &c.

32. This statement of the case is not in any way borne out by the text of the communications which passed. The first formal proposal came from M. de Vergennes in a note dated the 6th October, 1782, and runs as follows:

"La concurrence entre les pêcheurs Français et Anglais aiant été une source intarissable de discussions et de querelles, le Roi pense que le moyen le plus sûr de les prévenir est de séparer les pêcheries respectives: en conséquence Sa Majesté consent à se désister du droit de pêche qui lui est acquis en vertu de l'Article XIII du Traité d'Utrecht, depuis le Cap de Bona Vista jusqu'au Cap Saint-Jean, à condition que ses sujets pêcheront seuls à l'exclusion des Anglais, depuis le Cap Saint-Jean en passant par le nord et le Cap Ray, &c."

33. The English Government, in a note dated the 24th October, declined to concede this exclusive right.

34. They objected to an Article in the Preliminaries of Peace which, without actually mentioning an exclusive right of fishery, was explained as intended to establish that right, and they only agreed to the insertion of an Article in the following words:

Article V. "Les Pescheurs François jouiront de la pesche qui leur est assignée par l'Article précédent, comme ils ont droit d'en jouir en vertu du Traité d'Utrecht."

35. At the same time, however, Mr. Fitzherbert, the British Plenipotentiary, delivered to the French Government a note in the terms of the eventual Declaration of the 3rd September, 1783, promising that His Britannic Majesty would take the most positive measures "pour prévenir que ses sujets ne troublent en aucune manière la pêche des François pendant l'exercice temporaire qui leur est accordé sur les côtes de l'Île de Terre-Neuve."

36. The words "par leur concurrence" were subsequently added to this Declaration, at the instance of M. de Vergennes, in the course of the negotiations for the Definitive Treaty of Peace.

37. On the 18th June, 1783, the British Ambassador sent home the draft of the French Counter-Declaration, which contained these words: "Quant à la pêche exclusive sur les côtes de Terre-Neuve qui a été l'objet des nouveaux arrangements dont les deux Souverains sont convenus sur cette matière elle est suffisamment exprimée par l'Article du Traité de Paix signé aujourd'hui, et par la Déclaration remise également ce jourd'hui par l'Ambassadeur et Plénipotentiaire de Sa Majesté Britannique, et Sa Majesté déclare qu'elle est pleinement satisfaite à cet égard."

38. The Duke of Manchester was thereupon instructed, if he could not obtain the omission of the word "exclusive" to make another Declaration upon the French Counter-Declaration, protesting that the King of England did not mean to grant *exclusive* fishery any other-wise than by ordering his subjects not to *molest by concurrence*, &c.

39. The Duke reported that the French Minister had been persuaded to omit the word "exclusive" in the Counter-Declaration, which would render another Declaration from the British Plenipotentiary unnecessary.

#### V.—*Negotiations of 1801–02.*

40. M. Waddington alludes to a proposal made by the Cabinet of Paris in 1802, that the exclusive rights of France should be established by a modification of Article XIII of the Treaty of Utrecht, and states that "Le Ministre Fox avoua qu'il ne reconnaissait pas l'opportunité de recourir à cet amendement, et qu'il suffisait de revenir purement et simplement au texte de 1783, qui confirmait dans toute leur force les droits d'Utrecht, le Gouvernement Britannique n'ayant jamais mis en doute le droit d'exclusivité de pêche en notre faveur."

41. There must obviously be some mistake about this, for Mr. Fox was not at the time in office. Mr. Addington was Prime Minister, and Lord Hawkesbury was Foreign Secretary. The Preliminaries of Peace were agreed upon in London between Lord Hawkesbury and M. Otto, and the negotiations for the Definitive Treaty were conducted at first at Paris, and subsequently at Amiens, between Lord Cornwallis and M. Joseph Buonaparte.

42. On the 26th November, 1801, Lord Cornwallis reported that on the XIIIth Article of the Preliminaries of Peace, "M. Buonaparte observed that they wished for some adjustment about the fisheries, to which I replied that I was not sufficiently conversant in that business to enter into particulars, and could only at present say that it was a matter in which the British Government must act with the utmost caution, as any improvident cession in that Article would create a most violent clamour, and be attended with very disagreeable consequences."

43. In the instructions sent to Lord Cornwallis in reply, Lord Hawkesbury observed: "With regard to what Joseph Buonaparte stated to your Lordship on the subject of the fisheries on the Banks of Newfoundland and in the Gulf of St. Lawrence, I have to inform you that, from the representations of the different bodies interested in those fisheries, it appears to be scarcely possible to make any new concessions to France in this respect which could be considered as real benefits to that Power, and which would not be injurious to the interests of His Majesty's subjects who are engaged in this branch of com-



merce; and, indeed, Article XIII provides merely for the re-establishment of the fisheries on the footing on which they were previously to the commencement of the war, and appears to have no reference to any further arrangement than to such as, without altering the relative situation of the two parties, might contribute to the maintenance of peace in the fisheries as they now exist."

44. A proposal made subsequently by the French Plenipotentiary at Amiens for the cession of a portion of Newfoundland in full sovereignty to France was positively refused by the British Government; and on the 13th February, 1802, Lord Cornwallis states in a private letter to Lord Hawkesbury: "The French Plenipotentiary seems determined to press for some further indulgences at Newfoundland, but I am too well apprised of the importance of those fisheries to make the smallest concessions without His Majesty's commands, and I have taken pains to discourage M. J. Buonaparte from entertaining any hopes that our Government can give way on that point."

#### VI.—*Subsequent Discussions.*

45. Lord Palmerston's note of the 10th July, 1838, to Comte Sebastiani, which is quoted in M. Waddington's note, distinctly denies the right of the French to an exclusive fishery under any Treaty engagement or documentary undertaking. His language is very clear on this point, and he shows that the Proclamations issued warning British subjects to leave the coast were so issued, not to prevent British fishermen from fishing, but in consequence of interruptions having been caused to French fishermen, and to prevent such interruptions.

46. The views expressed in Lord Salisbury's note to M. Waddington of the 24th August, 1887, are in accord with the general principles laid down in that note, and with the position constantly maintained by Her Majesty's Government, that the French have not an exclusive right of fishery under the Treaty engagements, and that the British have never given up their right to a concurrent fishery, although in exercising this right they are not to interrupt the French fishermen.

47. It is difficult to understand how it can be supposed that such a contention has now been advanced for the first time, whereas it has formed the basis of all action and argument on the part of Her Majesty's Government for the last 120 years. The first Law Officers' opinion, of the 30th May, 1835, quoted in M. Waddington's note, was, as his Excellency observes, modified on further consideration and on their being supplied with more detailed information. It was, in fact, given on a partial and defective statement of the case. The second Report, of the 13th April, 1837, which his Excellency also quotes, stated distinctly that, "if there were really good room within the limits of the district in question for the fishermen of both nations to fish without interfering with each other, then we do not think that this country would be bound to prevent her subjects from fishing there." It went on to say that "it appears from the Report of Admiral Sir H. P. Halkett that this is hardly practicable."

48. The same consideration is made of the ground of the argument used in Mr. Labouchere's despatch of the 16th January, 1857, that whether the rights of the French were in strict logic exclusive or not, they were so in practice. But this would be a question of fact, and

it must be remembered that Mr. Labouchere's despatch was written with the object of recommending to the acceptance of the Colony the Convention of 1857 for the settlement of the question. It was impossible for him to adopt the view now advanced in M. Waddington's note, that the 1st Article of the Convention was no more than a formal recognition of the ancient French rights. He did not deny—what was, in fact, unquestionable—that the Convention was an alteration of existing arrangements; but he sought to prove that the interests of the Colony would not in reality suffer by it. It was not, therefore, his purpose to define the strict rights of the British fishermen, so much as their practical position at the time: the tenour of his argument was that that position would not be injuriously affected by the Convention, and the language of his despatch is certainly not in all respects precise.

49. Such as the argument was, it undoubtedly did not recommend itself to the Colonial Legislature, which unanimously and unhesitatingly rejected the Arrangement. Whether that decision was wise or unwise is a question foreign to the present argument. But the mere fact that British fishermen have now for many years past fished in the waters on the west and north-east coasts of Newfoundland, without giving cause for complaint on the part of French fishermen, except in occasional instances, is to Her Majesty's Government evidence that there is room for the fishermen of both countries if proper precautions are taken. The arrangement has no doubt its inconveniences, but that it is possible is proved by the fact that it exists, and that, on the whole, the disputes which arise between the fishermen of the two countries are not considerable nor numerous.

FOREIGN OFFICE, *July 9, 1839.*

[Annex.]

*Viscount Palmerston to Count Sebastiani.*

[Extract.]

*Foreign Office, July 10, 1838.*

I NOW proceed to answer that part of your Excellency's note which relates to the conflicting opinions that are entertained as to the true interpretation of the Declaration annexed to the Treaty of the 3rd September, 1783, and in which your Excellency urges the British Government to disavow the claim of British subjects to a right of fishery upon the coast in question concurrent with the right of the subjects of France.

And in the first place I beg to observe that it does not appear to the British Government that either your Excellency's representation or that of your predecessor has shown that any specific grievance has been sustained by French subjects in consequence of the doubts which are said to be entertained upon this question, so as to prove that there is any pressing necessity for the call which the French Government makes in this respect upon that of Great Britain.

But the British Government is nevertheless willing to enter into an amicable examination of the matter, with a view to set those doubts at rest, although it is my duty to say that the British Gov-



ernment are not prepared, according to the view which they at present take of the matter, to concede the point in question.

The right of fishing on the coast of Newfoundland was assigned to French subjects by the King of Great Britain in the Treaty of Peace in 1783, to be enjoyed by them, "as they had the right to enjoy that which was assigned to them by the Treaty of Utrecht."

But the right assigned to French subjects by the Treaty of Utrecht was "to catch fish and to dry them on land," within the district described in the said Treaty, subject to the condition not to "erect any buildings" upon the island "besides stages made of boards and huts necessary and usual for drying of fish," and not to "resort to the said island beyond the time necessary for fishing or drying of fish."

A Declaration annexed to the Treaty of 1783, by which the right assigned to French subjects was renewed, contains an engagement that "in order that the fishermen of the two nations may not give a cause for daily quarrels, His Britannic Majesty would take the most positive measures for preventing his subjects from interrupting in any manner by their competition the fishery of the French during the temporary exercise of it which was granted to them;" and that His Majesty would "for this purpose cause the fixed settlements which should be found there to be removed."

A Counter-Declaration stated that the King of France was satisfied with the arrangement concluded in the above terms.

The Treaty of Peace of 1814 declares that the French right "of fishery at Newfoundland is replaced upon the footing upon which it stood in 1792."

In order, therefore, to come to a right understanding of the question, it will be necessary to consider it with reference to historical facts, as well as with reference to the letter of the Declaration of 1783; and to ascertain what was the precise footing upon which the French fishery actually stood in 1792.

Now it is evident that specific evidence would be necessary in order to show that the construction which the French Government now desire to put upon the Declaration of 1783 is the interpretation which was given to that Declaration at the period when the Declaration was framed, and when the real intention of the parties must have been best known. It would be requisite for this purpose to prove that, upon the conclusion of the Treaty of 1783, French subjects actually entered upon the enjoyment of an exclusive right to catch fish in the waters off the coast in question; and that they were in the acknowledged enjoyment of the exercise of that right at the commencement of the war in 1792. But no evidence to such effect has yet been produced. It is not, indeed, asserted by your Excellency, nor was it contended by Prince Talleyrand in his note of 1831, to which your Excellency specially refers, that French subjects were, at the breaking out of the war in 1792, in the enjoyment of such an exclusive right. And, moreover, it does not appear that such right was claimed by France or admitted by England at the termination of the war in 1801 or at the Peace of 1814.

It is true that the privilege secured to the fishermen of France by the Treaty and Declaration of 1783, a privilege which consists in the periodical use of a part of the shore of Newfoundland for the purpose of drying their fish, has, in practice, been treated by the British Government as an exclusive right during the period of the fishing

season, and within the prescribed limits; because, from the nature of the case, it would scarcely be possible for British fishermen to dry their fish upon the same part of the shore with the French fishermen, without interfering with the temporary establishments of the French for the same purpose, and without interrupting their operations. But the British Government has never understood the Declaration to have had for its object to deprive British subjects of the right to participate with the French in taking fish at sea off that shore, provided they did so without interrupting the French cod fishery. And although, in accordance with the true spirit of the Treaty and Declaration of 1783, prohibitory Proclamations have from time to time been issued, on occasions when it has been found that British subjects, while fishing within the limits in question, have caused interruption to the French fishery, yet in none of the public documents of the British Government—neither in the Act of Parliament of 1788, passed for the express purpose of carrying the Treaty of 1783 into effect, nor in any subsequent Act of Parliament relating to the Newfoundland fishery, nor in any of the instructions issued by the Admiralty or by the Colonial Office, nor in any Proclamation which has come under my view, issued by the Governor of Newfoundland or by the British Admiral upon the station—does it appear that the right of French subjects to an exclusive fishery, either of codfish or of fish generally, is specifically recognized.

In addition to the facts above stated, I will observe to your Excellency, in conclusion, that if the right conceded to the French by the Declaration of 1783 had been intended to be exclusive within the prescribed district, the terms used for defining such right would assuredly have been more ample and specific than they are found to be in that document. For in no other similar instrument which has ever come under the knowledge of the British Government is so important a concession as an exclusive privilege of this description announced in terms so loose and indefinite.

Exclusive rights are privileges which, from the very nature of things, are likely to be injurious to parties who are thereby debarred from some exercise of industry in which they would otherwise engage. Such rights are therefore certain to be at some time or other disputed, if there is any maintainable ground for contesting them; and for these reasons, when negotiators have intended to grant exclusive rights, it has been their invariable practice to convey such rights in direct, unqualified, and comprehensive terms, so as to prevent the possibility of future dispute or doubt.

In the present case, however, such forms of expression are entirely wanting, and the claim put forward on the part of France is founded simply upon inference, and upon an assumed interpretation of words.



*Decision in the case of the White Fawn.*

In the Court of Vice Admiralty.

Judgment of his honor Judge Hazen in the case of the "White Fawn."

*The following is a copy of the decision recently pronounced by his honor Judge Hazen in this case:*

At the last sitting of this court Mr. Tuck, B. C., proctor for the Crown, applied, on behalf of Sir John A. McDonald, the attorney-general of the Dominion, for a monition, calling upon the owners of the schooner and her cargo to show cause why the *White Fawn* and the articles above enumerated, with her tackle, etc., should not be considered as forfeited to the Crown for a violation of the Imperial Statute 59, George III, cap. 38, and the Dominion Statutes, 31 Vic., cap. 61, and 33 Vic., cap 15.

The *White Fawn*, as it appears from her papers, was a new vessel of 64 tons, and registered at Gloucester, Massachusetts, in 1870, and owned in equal shares by Messrs. Somes, Friend, and Smith, of that place;

That she was duly licensed for one year, to be employed in the coasting trade and fisheries, under the laws of the United States;

That by her "fishery shipping paper," signed by the master and ten men, the usual agreement was entered into for pursuing the cod and other fisheries, with minute provisions for the division of the profits among the owners, skipper, and crew. These papers and other documents found on board are all in perfect order, and not the slightest suspicion can be thrown upon them. The seamen's articles are dated 19th November, 1870. On the 24th Nov., 1870, she arrived at Head Harbor, a small bay in the eastern end of Campobello, in the county of Charlotte, in this Province.

Captain Betts, a fishery officer, in command of the *Water Lily*, a vessel in the service of the Dominion, states that on the 25th November he was lying with his vessel at Head Harbor. Several other vessels, and among them the *White Fawn*, were lying in the harbor; that he went on board the *White Fawn*. He states a number of particulars respecting the vessel from her papers, and adds that the said vessel, *White Fawn*, had arrived at Head Harbor on the 24th Nov., and had been engaged purchasing fresh herrings, to be used as bait in trawl fishing; that there were on board about 5,000 herrings, which had been obtained and taken on board at Head Harbor; also 15 tons of ice, and all the materials and appliances for trawl fishing; and that the master admitted to him that the herring had been obtained at Head Harbor by him for the purpose of being used as bait for fishing. There are then some remarks as to the master being deceived as to the fact of the cutter being in the neighborhood, which are not material; and that deponent further understood that persons had been employed at Head Harbor to catch the herring for him; that he seized the schooner on the 2th (sic), and arrived with her the same evening at St. John, and delivered her on the next day to the collector of the customs.

No reason is given for the delay which has taken place of more than two months in proceeding against the vessel, which was seized, as

alleged by Captain Betts, for a violation of the terms of the convention and the laws of Canada; her voyage was broken up and her crew dispersed at the time of the seizure.

By the Imperial Statute 59, George III, cap. 38, it is declared that if any foreign vessel, or person on board thereof, "shall be found to be fishing, or to have been fishing, or preparing to fish within such distance (three marine miles) of the coast, such vessel and cargo shall be forfeited."

The Dominion Statutes, 31 Vic., cap. 61, as amended by 33 Vic., cap. 15, enacts: "If such foreign vessel is found fishing, or preparing to fish, or to have been fishing in British waters, within three marine miles of the coast, such vessel, her tackle, etc., and cargo shall be forfeited."

The *White Fawn* was a foreign vessel in British waters; in fact, within one of the counties of this Province when she was seized. It is not alleged that she is subject to forfeiture for having entered Head Harbor for other purposes than shelter or obtaining wood and water. Under Section III of the imperial act no forfeiture but a penalty can be inflicted for such entry. Nor is it alleged that she committed any infraction of the customs or revenue laws. It is not stated that she had fished within the prescribed limits, or had been found fishing, but that she was "preparing to fish," having bought bait (an article no doubt very material if not necessary for successful fishing) from the inhabitants of Campobello. Assuming that the fact of such purchase establishes a "preparing to fish" under the statutes (which I do not admit), I think, before a forfeiture could be incurred, it must be shown that the preparations were for an illegal fishing in British waters; hence, for aught which appears, the intention of the master may have been to prosecute his fishing outside of the three-mile limit, in conformity with the statutes; and it is not for the court to impute fraud or an intention to infringe the provisions of our statutes to any person, British or foreign, in the absence of evidence of such fraud. He had a right, in common with all other persons, to pass with his vessel through the three miles from our coast to the fishing grounds outside, which he might lawfully use, and, as I have already stated, there is no evidence of any intention to fish before he reached such grounds.

The construction sought to be put upon the statutes by the Crown officers would appear to be thus: "A foreign vessel, being in British waters and purchasing from a British subject any article which may be used in prosecuting the fisheries, without its being shown that such article is to be used in illegal fishing in British waters, is liable to forfeiture as preparing to fish in British waters."

I cannot adopt such a construction. I think it harsh and unreasonable and not warranted by the words of the statutes. It would subject a foreign vessel, which might be of great value, as in the present case, to forfeiture, with her cargo and outfits, for purchasing (while she was pursuing her voyage in British waters, as she lawfully might do, within three miles of our coast) of a British subject any article, however small in value (a cod-line or net, for instance), without its being shown that there was an intention of using such article in illegal fishing in British waters before she reached the fishing ground to which she might legally resort for fishing under the terms of the statutes.



I construe the statutes simply thus: If a foreign vessel is found (1st) having taken fish; (2nd) fishing, although no fish have been taken; (3rd) "preparing to fish," i. e., with her crew arranging her nets, lines, and fishing tackle for fishing, though not actually applied to fishing, in British waters, in either of those cases specified in the statutes the forfeiture attaches.

I think the words "preparing to fish" were introduced for the purpose of preventing the escape of a foreign vessel which, though with intent of illegal fishing in British waters, had not taken fish or engaged in fishing by setting nets and lines, but was seized in the very act of putting out her lines, nets, etc., into the water, and so preparing to fish. Without these a vessel so situated would escape seizure, inasmuch as the crew had neither caught fish nor been found fishing.

Taking this view of the statutes, I am of the opinion that the facts disclosed by the affidavits do not furnish legal ground for the seizure of the American schooner *White Fawn* by Captain Betts, the commander of the Dominion vessel *Water Lily*, and do not make out a *prima facie* case for condemnation in this court of the schooner, her tackle, &c., and cargo.

I may add that as the construction I have put upon the statute differs from that adopted by the crown officers of the Dominion, it is satisfactory to know that the judgment of the supreme court may be obtained by information filed there, as the Imperial Act 59 George III, cap. 38, gave concurrent jurisdiction to that court in cases of this nature.

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#### OPINION OF UPHAM, UNITED STATES COMMISSIONER, IN CASE OF SCHOONER "WASHINGTON."

UPHAM, *United States Commissioner*:

In 1843 the fishing schooner *Washington* was seized by her Britannic Majesty's cruiser, when fishing, broad, as it is termed, in what is called the Bay of Fundy, ten miles from the shore.

This seizure was justified on two grounds:

1. That the Bay of Fundy was an indentation of the sea, extending up into the land, both shores of which belonged to Great Britain, and that for this reason she had, by virtue of the law of nations, the exclusive jurisdiction over this sheet of water and the sole right of taking fish within it.

2. It was contended that, by a fair construction of the treaty of October 20, 1818, between Great Britain and the United States, the United States had renounced the liberty, heretofore enjoyed or claimed, to take fish on certain bays, creeks, or harbors, including, as was contended, the Bay of Fundy, and other similar waters within certain limits described by the treaty.

The article containing this renunciation has various other provisions, supposed to throw some light on the clause of renunciation referred to. I therefore quote it entire, which is as follows: "Whereas differences have arisen respecting the liberty claimed by the United States to take, dry, and cure fish on certain *coasts, bays, harbors, and creeks* of His Britannic Majesty's dominions *in America*, it is agreed that the inhabitants of the United States shall have, in

common with the subjects of His Britannic Majesty, the liberty to take fish on certain portions of the southern, western, and northern coast of Newfoundland, and also on the *coasts, bays, harbors, and creeks* from Mount Joly on the southern coast of Labrador, to and through the Straits of Belle Isle, and thence northwardly indefinitely along the coast; and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled *bays, harbors, and creeks* of said described *coasts*, until the same become settled. And the United States renounce the liberty *heretofore enjoyed* or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three marine miles of any of the *coasts, bays, creeks, or harbors* of His Britannic Majesty's dominions in *America*, not included within the above mentioned limits; provided, however, that the American fishermen shall be admitted to enter *such bays or harbors* for the purpose of *shelter, and of repairing damages therein, of purchasing wood, and of obtaining water*, and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them."

The first ground that has been taken in the argument of this case is that, independent of this treaty, Great Britain had the exclusive jurisdiction over the Bay of Fundy as part of her own dominions, by the law of nations. As this matter, however, is settled by the treaty, the position seems to have no bearing on the case, except as it may tend to show that the United States would be more likely to renounce the right of fishing within limits thus secured to Great Britain by the law of nations than if she had no such claim to jurisdiction.

But on this point we are wholly at issue. The law of nations does not, as I believe, give exclusive jurisdiction over any such large arms of the ocean.

Rights over the ocean were originally common to all nations, and they can be relinquished only by common consent. For certain purposes of protection and proper supervision and collection of revenue the dominion of the land has been extended over small enclosed arms of the ocean and portions of the open sea immediately contiguous to the shores. But beyond this, unless it has been expressly relinquished by treaty or other manifest assent, the original right of nations still exists of free navigation of the *ocean*, and a free right of each nation to avail itself of its common stores of wealth or subsistence. (Grotius, Book 2, ch. 2, sec. 3; Vattel, Book 1, ch. 20, secs. 282 and '3.)

Reference has been made to the Chesapeake and Delaware bays, over which the United States have claimed jurisdiction, as cases militating with this view; but those bays are the natural outlets and enlargements of large rivers and are shut in by projecting headlands, leaving the entrance to the bays of such narrow capacity as to admit of their being commanded by forts, and they are wholly different in character from such a mass of the ocean water as the Bay of Fundy.

There is no principle of the law of nations that countenances the exclusive right of any nation in such an arm of the sea. Claims, in some instances, have been made of such rights, but they have been seldom enforced or acceded to.



This is well known to be the prevailing doctrine on the subject in America, and it would have been surprising if the United States negotiators had relinquished, voluntarily, the large portions of the ocean now claimed by Great Britain as her exclusive right, under the provisions of this treaty, on the ground that it was sanctioned by the law of nations.

It would have been still more surprising if it had been thus relinquished, after its long enjoyment by the inhabitants of America in *common*, from the time of their first settlement down to the Revolution, and from that time by the United States and British provinces, from the treaty of 1783 to that of 1818.

I see, therefore, no argument, in the view which has been suggested, to sustain the right of exclusive jurisdiction claimed by England.

2. I come now to the consideration of the *second* point taken in the argument before us, which is, that by the treaty of 1818 the United States *renounced* the right of taking fish within the limits now in controversy. This depends on the construction to be given to the article of the treaty which I have already cited.

In the construction of a treaty, admitting of controversy on account of its supposed ambiguity or uncertainty, there are various aids we may avail ourselves of in determining its interpretation.

"It is an established rule," says Chancellor Kent, "in the exposition of statutes," and the same rule, I may add, applies to treaties, "that the intention of the lawgiver is to be deduced from a view of the whole and of every part of a statute, taken and compared together, and the real intention, when accurately ascertained, will always prevail over the literal sense of the terms."

He further says, "When the words are not explicit, the intention is to be collected from the occasion and necessity of the law, from the mischief felt, and the remedy in view; and the intention is to be taken or presumed according to what is consonant to reason and good discretion." (1 Kent's Com., 462.)

Now, there are various circumstances to be considered in connexion with the treaty that will aid us in coming to a correct conclusion as to its intent and meaning.

These circumstances are the entire history of the fisheries; the views expressed by the negotiators of the treaty of 1818, as to the object to be effected by it; the subsequent practical construction of the treaty for many years; the construction given to a similar article in the treaty of 1783; the evident meaning to be gained from the whole article taken together; and from the term "coasts" as used in the treaty of 1818 and other treaties in reference to this subject. All these combine, as I believe, to sustain the construction of the provisions of the treaty as contended for by the United States.

It will not be contested that the inhabitants of the territory now included within the United States, as a matter of history, have had generally the common and undisturbed right of fishery, as now claimed by them, from the first settlement of the continent down to the time of the Revolution and that it was subsequently enjoyed in the same manner, in common by the United States and the British provinces, from the treaty of 1783 down to the treaty of 1818.

This right was based originally on what Dr. Paley well regards, in his discussion of this subject, "as a general right of mankind;" and the long and undisturbed enjoyment of it furnishes just ground

for the belief that the United States negotiators would be slow in relinquishing it. They certainly would not be likely to relinquish more than was asked for, or what the United States negotiators a few years before contended was held by the same tenure as the national independence of the United States, and by a perpetual right.

In the negotiation of the treaty of peace of 1814 no provision was inserted as to the fisheries. Messrs. Adams and Gallatin notified the British commissioners that "the United States claimed to hold the right of the fisheries by the same tenure as she held her independence; that it was a perpetual right appurtenant to her as a nation, and that no new stipulation was necessary to secure it."

The negotiators on the part of the British Government did not answer this declaration or contest the validity of the ground taken.

Afterwards, in 1815, the consultations had between Lord Bathurst and Mr. Adams, the then Secretary of State, relative to the fisheries, show on what grounds negotiations were proposed, which were perfected by the treaty of 1818; and that the renunciation desired, from the treaty of 1783, consisted of the *shore or boat fisheries*, which are prosecuted within a marine league of the *shore*, and of no others.

At the first interview of the commissioners Lord Bathurst used this distinct and emphatic language: "As, on the one hand, Great Britain cannot permit the vessels of the United States to fish within the creeks and *close upon the shores* of the British territories, so, on the other hand, it is by no means her intention to interrupt them in fishing anywhere in the open sea, or without the *territorial jurisdiction, a marine league from the shore.*"

Again he said on a subsequent occasion: "It is not of fair competition that His Majesty's Government has reason to complain, but of the preoccupation of British *harbors and creeks.*" (Sabine's Report on Fisheries, p. 282.)

It is clear that it was only within these narrow limits the British Government designed to restrict the fisheries by the citizens of the United States.

The views of Messrs. Gallatin and Rush, the American negotiators of the treaty of 1818, appear from their communication made to the Secretary of State, Mr. Adams, immediately after the signature of the treaty.

In this communication they say: "The renunciation in the treaty expressly states that it is to extend only to the distance of three miles from the coast; and this point was the more important, as, with the exception of the fisheries in open boats in certain harbors, it appeared that the fishing ground on the *whole coast of Nova Scotia* was more than three miles from the shore."

It thus appears that the negotiators of both Governments concurred, at the time of making the treaty, in giving to it the intent and meaning now contended for by the United States.

It further appears that such was the intent and effect of the treaty of 1818 from the fact that the construction practically given to it for more than twenty years, and indeed down to the year 1842, conformed to the views of the negotiators as thus expressed. (See Sabine's Report, p. 294.)

There are certain circumstances also appearing in the case which show the evident reluctance of the British Government to assert the



exclusive pretensions ultimately put forth by them, and that they had been goaded to it against their better sense, as to the construction of the treaty, by jealousies and laws of the colonists of a very unusual character, and which Great Britain was slow to sanction. And when she ultimately concluded to assert this claim, she tendered with it propositions for new negotiations, by which all matters connected with the colonies should be amicably adjusted.

I shall now consider the construction given to similar words of the treaty of 1783.

It will not be denied that the words used in the treaty of 1783 and the treaty of 1818, where they are identical and where express reference is made to the provisions of the former treaty, mean the same thing. When the United States are said, in the treaty of 1818, to *renounce the liberty heretofore enjoyed and claimed*, it means the liberty heretofore enjoyed under the treaty of 1783; and the liberty *then* enjoyed was to take fish "*on certain bays and creeks*," without any limitations as to distance from them.

Now, what were *those bays and creeks* on which—that is, *along the line of which*, drawn from headland to headland, the citizens of the United States were allowed to take fish under the treaty of 1783? It cannot be pretended that *the bays and creeks* there intended were any other than small indentations from the great arms of the sea. They certainly did not include the Bay of Fundy and other large waters. Because, if fishing was allowed merely on that bay, as is now contended—that is, on and along the line of the bay from headland to headland—then all fishing *within* the Bay of Fundy would be excluded. But it is a well-known fact that the suggestion never was made, or a surmise raised, that the expressions used in the treaty of 1783 permitted the fishermen of the United States to go merely to the line of the Bay of Fundy, and restricted them from fishing within it.

A practice, therefore, for thirty-five years under this treaty of 1783 had determined *what classes of bays and creeks* were meant by the expressions there used.

The treaty of 1818 *renounced* the liberty *heretofore* enjoyed of fishing on these *identical bays and creeks*—that is, immediately on the line of them—and also further renounced the liberty of fishing *within a space of three miles of them*; but *the bays and creeks* here referred to were the same as those referred to in the treaty of 1783, and neither of them ever included the Bay of Fundy.

The express connection between these two treaties is apparent from the face of them. Reference is made to the treaty of 1783 in a manner that cannot be mistaken; the subject-matter is the same, and the language as to the point in question identical.

I contend, therefore, that the governments in adopting the language of the treaty of 1783, in the treaty of 1818, received the words with the construction and application given to them up to that time, and that neither party can now deny such construction and application, but is irrevocably bound by it.

There are other portions of the article in question that aid in giving a construction to the clause under consideration, and that irresistibly sustain the view I have adopted.

Thus it is provided, in another portion of the *same article* in reference to these *same creeks and bays*, that the fishermen of the United

States shall be admitted to enter "*such bays,*" for the purpose of shelter and to obtain wood and water; thus clearly implying that such bays are small indentations extending into the land to which fishing craft would naturally resort for shelter and to obtain wood and water, and not large, open seas like the Bay of Fundy.

There are numerous bays of this character, along the coast, within the Bay of Fundy, such as the Bay of Passamaquoddy, Annapolis, St. Mary's, Chignecto, Mines Bay, and other well-known bays extending up into the land.

There is a further argument to sustain the American construction given to the treaty derived from the meaning affixed to the term "*coasts,*" as applied by the usage of the country, and which was adopted and embodied in the various treaties between France and England from a very early period, and has been continued down to the present time.

I have not seen this argument adverted to; but it seems to me important, and indeed of itself quite conclusive, as to the matter in question, and I shall now consider it.

The term "*coasts,*" in all these prior treaties, is applied to all the borders and shores of the eastern waters, not only along the mainland but in and about the Gulf of St. Lawrence, and around all the larger and smaller islands where fisheries were carried on.

These coasts are thus defined and specified in the treaty of Utrecht between Great Britain and France in 1713, of Paris in 1763, and other treaties to the present time. In the treaty of Utrecht between France and England, the liberty of taking and drying fish is allowed "on the *coasts* of Newfoundland;" provision is also made as to the fisheries on the *coasts*, in the *mouth*, and in the *Gulf* of St. Lawrence.

Reference is made to these "*coasts*" in the same manner in the treaty of Paris, which took place after the conquest of Canada. The French are permitted by this treaty to fish in the *Gulf* of St. Lawrence at a given distance from all "*the coasts*" belonging to Great Britain, as well those "*of the continent*" as those of the *islands* situated in the Gulf of St. Lawrence. The fishery also "*on the coasts*" of the comparatively small island "*of Cape Breton out of said Gulf*" is regulated and provided for; and further it is provided "that the fishery on the *coasts of Nova Scotia*, or Acadia, and everywhere else, out of the said Gulf, shall remain on the footing of former treaties."

Now, I regard it as utterly impossible for any one looking at these treaties, with the map of the islands and waters in the Gulf or Bay of St. Lawrence, and in and around Nova Scotia, referred to in these treaties, to doubt for a moment that the term "*coasts*" was designed to apply, and did, in terms, apply to the whole contour of the mainland and the islands referred to, including the entire circuit of *Nova Scotia on the Bay of Fundy*.

These expressions are continued in the same manner in the treaty of 1783. The United States are there allowed to take fish in the Gulf of St. Lawrence, "*on the coast* of Newfoundland," and also "*on the coasts*, bays, and creeks of all other of His Britannic Majesty's dominions in America."

Again, in the preamble to the treaty of 1818, which we are now considering, it is said to have been caused by differences as to the liberty claimed to take fish on certain *coasts*, bays, harbors, and creeks of his Britannic Majesty's dominions in America, and by the treaty



provision is made as to the fisheries on *the coasts* of Newfoundland, and on "*the coasts*, bays, harbors, and creeks from Mount Joly, on the southern coast of Labrador, to and through the straits of Belle Isle, and thence northwardly indefinitely along the *coast*;" and then follows the renunciation from *the right before enjoyed* by the United States "to take, dry, or cure fish on or within three marine miles of any of *the coasts*, bays, creeks, or harbors of his Majesty's dominions in America."

It seems to me undeniable that the term "*coasts*" in all these treaties was well defined and known. The outlet of the St. Lawrence is equally well known by the term "bay" or "gulf." The shores on that bay or gulf, and on the islands within it, are uniformly spoken of as "*coasts*;" and the same mode of designating the shores along this entire country is used in all these treaties in reference to the various waters where fisheries were carried on.

"The coasts" named in these treaties were not only the coasts of the Bay or Gulf of St. Lawrence, and of the island of Cape Breton, but extended from the head of the Bay of Fundy along the bay entirely around Nova Scotia to the Gulf or Bay of St. Lawrence.

There never had been any misunderstanding as to the application of this term, or denial of the right to fish on these coasts, as I have named them, under all these treaties down to 1818. The term "*coasts*," as applied to Nova Scotia during this long period, was as well known and understood as the term "*coasts*" applied to England or Ireland; and it included the coasts on the Bay of Fundy as fully and certainly as the term "*coasts*" of England applies to the coasts of the English channel. It was a fixed locality, known and established, and the right of taking fish had always been "*enjoyed there*."

When, therefore, the treaty of 1818 "*renounced the liberty, heretofore enjoyed*, of taking fish within three marine miles of any of *the coasts*, bays creeks, etc., of his Britannic Majesty's dominions," the renunciation was, for this distance from a fixed locality, as fully settled and established as language, accompanied by a long and uninterrupted usage, could make it.

"The coasts" named are those of 1783, and of prior treaties, and the renunciation of three miles was to be reckoned from these coasts. The Bay of Fundy was therefore not excluded from the fishing grounds of the United States.

The annexed sketch of the Gulf or Bay of St. Lawrence, with the adjoining waters and coasts, will show how the term coasts was practically applied under all the treaties referred to prior to 1818.

I am not aware of any reply to the points here taken that I think can at all invalidate them.

From the papers filed in the case, it appears that in 1841 the province of Nova Scotia caused a case stated to be drawn up and forwarded to England, with certain questions to be proposed to the law officers of the crown.

One inquiry was, whether the fishermen of the United States have any authority to enter any of *the bays of that province* to take fish. These officers, Messrs. Dodson and Wilde, reply that no right exists to enter the bays of Nova Scotia to take fish, "as they are of opinion the term headland is used in the treaty to express the part of the land excluding the interior of the bays and inlets of the coasts."

Now, it so happens that no such term is used in the treaty, and their decision, based on it, falls to the ground.

They were also specifically asked to define what is to be considered a headland. This they did not attempt to do. The headlands of the Bay of Fundy have never been defined or located, and, from the contour of the bay, no such headlands properly exist.

These officers held that the American fisherman, for the reason named, could not enter the bays and harbors of Nova Scotia. But the Bay of Fundy is not a bay or harbor of the Province of Nova Scotia, and was never included in its limits. The Bay of Fundy is bounded on one side by Nova Scotia, and on the other by New Brunswick, and it is not clear that either the question proposed or answer given was designed to include this large arm of the sea.

It is also said that Mr. Webster has conceded the point in issue in a notice given to American fishermen. The claims, now asserted, were not put forth till many years after the treaty of 1818; and it was not until 1852 the British Government gave notice that seizures would be made of fishermen taking fish in violation of the construction of the treaty of 1818, as then claimed by them, when Mr. Webster, to avoid the collisions that might arise, issued a notice setting forth the claims put forth by England.

In one part of his notice he says: "It was an oversight to make so large a concession to England," but closes by saying: "Not agreeing that the construction put upon the treaty by the English Government is conformable to the intentions of the contracting parties, this information is given that those concerned in the fisheries may understand how the concern stands at present and be upon their guard."

Mr. Webster subsequently denied relinquishing, in any manner, by this notice the rights of the United States, as claimed under this treaty.

Detached expressions quoted from it to sustain a different opinion can hardly be regarded, under such circumstances, as an authority.

I have seen no other argument or suggestions tending, as I think, to sustain the grounds taken by the British Government.

On the other hand, I have adverted briefly, as I proposed, to the history of the fisheries; the views expressed by the negotiators of the treaty of 1818, as to the object to be effected by it; the subsequent practical construction of it for many years; the construction given to a similar article in the treaty of 1783; the evident meaning to be gained from the entire article of the treaty taken together; and from the term "coasts" as used in the treaty of 1818 and other treaties in reference to this subject; and the whole combine, as I believe, to sustain the construction contended for by the United States.

I am therefore of opinion the owners of *Washington* should receive compensation for the unlawful seizure of that vessel by the British Government when fishing more than three miles from the shore or coast of the Bay of Fundy.



PORTIONS OF "CASE OF HER MAJESTY'S GOVERNMENT" BEFORE  
THE FISHERY COMMISSION UNDER THE TREATY OF WASHINGTON,  
OF MAY 8TH, 1871.

PART I—CANADA.

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CHAPTER II. *Advantages derived by United States Citizens.*

1. *Liberty of fishing in British Waters.*

Liberty to prosecute freely the sea fisheries 'on the coasts and shore in the bays, harbors, and creeks' of Canada, is in itself a very valuable concession to United States citizens. It concedes the common use of extensive and productive fishing grounds, which are readily accessible to American fishermen, and are advantageously situated as regards their home market. <sup>a</sup>

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SUMMARY.

The privileges secured to United States citizens under Article XVIII of the Treaty of Washington, which have been above described particularly and in detail, may be summarized as follows:—

1.—The liberty of fishing in all inshore waters of the Dominion; the value of which shown by the kinds, quantity, and value of the fish annually taken by United States fishermen in those waters, as well as by the number of vessels, hands and capital employed.

2.—The liberty to land for the purpose of drying nets, and curing fish, a privilege essential to the successful prosecution of fishing operations.

3.—Access to the shore for purposes of bait, supply &c, including the all important advantage of transferring cargoes, which enables American fishermen to double their profits by securing two or more full fares during one season.

4.—Participation in the improvements resulting from the fisheries service maintained by the Government of the Dominion.

The above privileges may be considered as susceptible of an approximate money valuation, which it is respectfully submitted should be assessed as well with reference to the quantity and value of fish taken, and the fishing-vessels and fishermen employed, as to other collateral advantages enjoyed by United States citizens.

It has been stated in the preceding portions of this chapter that an average number of at least 1,000 United States vessels annually frequent British Canadian waters. The gross catch of each vessel per trip has been estimated at \$5,600, a considerable portion of which is net profit, resulting from the privileges conferred by the treaty.

These privileges profitably employ men and materials representing in industrial capital several millions of dollars; the industries to the

<sup>a</sup> Documents and Proceedings of Halifax Commission, 1877, Volume I, p. 88.

advancement of which they conduce support domestic trade and foreign commerce of great extent and increasing value; they also serve to make a necessary and healthful article of food plentiful and cheap for the American nation. It is not merely the value of "raw material" in fish taken out of British Canadian waters which constitutes a fair basis of compensation; the right of this fishery was an exclusive privilege, the sole use of which was highly prized, and for the common enjoyment of which we demand equivalents to be measured by our just estimation of its worth; we enhance the main concession on this point by according kindred liberties and indispensable facilities, all of which are direct advantages; and, in order to illustrate the assessable value of the grant, we adduce certain data relating to the number of United States fishing-vessels more immediately interested, and the gross quantity and value of their catch in British Canadian waters.

In addition to the advantages above recited, the attention of the Commissioners is respectfully drawn to the great importance attaching to the beneficial consequences to the United States of honorably acquiring for their fishermen full freedom to pursue their adventurous calling without incurring constant risks, and exposing themselves and their fellow-countrymen to the inevitable reproach of willfully trespassing on the rightful domain of friendly neighbors. Paramount, however, to this consideration is the avoidance of irritating disputes, calculated to disquiet the public mind of a spirited and enterprising people, and liable always to become a cause of mutual anxiety and embarrassment.<sup>a</sup>

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## PART II—NEWFOUNDLAND.

### CHAPTER I. *Introduction and description of Newfoundland Fisheries.*

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In addition to the privileges so enjoyed under the Convention of 1818, Articles XVIII and XXI of the Treaty of Washington granted to United States citizens:

1.—The liberty to take fish of every kind, except shell-fish, on the remaining portion of the coast of Newfoundland, with liberty to land on the said coast for the purpose of drying their nets and curing their fish; provided that in so doing, they do not interfere with the rights of private property or with British fishermen in the peaceable use of any part of the said coast in their occupancy for the said purpose; the salmon and shad fisheries and all other fisheries in rivers and mouths of rivers being reserved exclusively for British fishermen.

2.—The admission into Newfoundland of fish-oil and fish of all kinds, except fish of the inland lakes and rivers falling into them, and except fish preserved in oil, being the produce of fisheries of the United States, free of duty.

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<sup>a</sup> *Ib.*, pp. 96-97.



The enjoyment of these privileges to continue for the period of twelve years certain. <sup>a</sup>

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\* \* \* and it will not escape the observation of the Commissioners that the privileges granted to United States fishermen in those treaties, were always limited in extent and did not confer the entire freedom for fishing operations which is now accorded by the Treaty of Washington, even on those portions of the coast which were then thrown open to them. <sup>b</sup>

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## CHAPTER II. *Advantages derived by United States Citizens.*

It will not be a matter of surprise that there should be an absence of exact statistical information when the facts are taken into consideration, that, until the Washington Treaty, this vast extent of fishery was exclusively used by the people of Newfoundland—sparsely scattered over a long range of coast, for the most part in small settlements, between the majority of which the only means of communication is by water, and where, up to the present time, there was no special object in collecting statistical details. It is proposed, however, to show by such evidence as will, it is believed, satisfy the Commissioners, the nature and value of the privileges accorded to the citizens of the United States under the Treaty of Washington. These may be conveniently divided into three heads, as follows:

- I. The entire freedom of the inshore fisheries.
- II The privilege of securing bait, refitting, drying, transshipping and procuring supplies.
- III. The advantage of a free market in Newfoundland for fish and fish-oil.

The privileges granted in return to British subjects will be treated subsequently and consist of—

1. The liberty of prosecuting fishing operations in United States waters north of the 39th parallel of north latitude and
2. The advantages of a free market in the United States for fish and fish-oil.

### *I.—The entire freedom of the inshore fisheries.*

Newfoundland, from that part of its coast now thrown open to United States fishermen, yearly extracts at the lowest estimate, \$5,000,000 worth of fish and fish-oil, and when the value of fish used for bait and local consumption for food and agricultural purposes, of which there are no returns, is taken into account, the total may be fairly stated at \$6,000,000 annually.

It may possibly be contended on the part of the United States that their fishermen have not in the past availed themselves of the Newfoundland inshore fisheries, with but few exceptions, and that they would and do resort to the coasts of that island only for the purpose of procuring bait for the Bank fishery. This may up to the

<sup>a</sup> *Ib.*, p. 101.

<sup>b</sup> *Ib.*, p. 102.

present time, to some extent, be true as regards codfish, but not as regards herring, turbot and halibut. It is not at all probable that, possessing as they now do the right to take herring and capelin for themselves on all parts of the Newfoundland coasts, they will continue to purchase as heretofore, and they will thus prevent the local fishermen, especially those of Fortune Bay, from engaging in a very lucrative employment which formerly occupied them during a portion of the winter season for the supply of the United States market.

The words of the Treaty of Washington, in dealing with the question of compensation, make no allusion to what use the United States may or do make of the privileges granted them, but simply state that, inasmuch as it is asserted by Her Majesty's Government that the privileges accorded to the citizens of the United States under Article XVIII are of greater value than those accorded by Articles XIX and XXI to the subjects of her Britannic Majesty, and this is not admitted by the United States, it is further agreed that a Commission shall be appointed, having regard to the privileges accorded by the United States to Her Britannic Majesty's subjects in Articles Nos. XIX and XXI, the amount of any compensation to be paid by the Government of the United States to that of her Majesty in return for the privileges accorded to the United States under Article XVIII.

It is asserted on the part of her Majesty's Government, that the actual use which may be made of this privilege at the present moment is not so much in question as the actual value of it to those who may, if they will, use it. It is possible, and even probable, that United States fishermen may at any moment avail themselves of the privilege of fishing in Newfoundland inshore waters to a much larger extent than they do at present; but even if they should not do so, it would not relieve them from the obligation of making the just payment for a right which they have acquired subject to the condition of making that payment. The case may be not inaptly illustrated by the somewhat analogous one of a tenancy of shooting or fishing privileges; it is not because the tenant fails to exercise the rights which he has acquired by virtue of his lease that the proprietor should be debarred from the recovery of his rent.

There is a marked contrast, to the advantage of the United States Citizens, between the privilege of access to fisheries the most valuable and productive in the world, and the barren right accorded to the inhabitants of Newfoundland of fishing in the exhausted and pre-occupied waters of the United States north of the thirty-ninth parallel of north latitude, in which there is no field for lucrative operations even if British subjects desired to resort to them; and there are strong grounds for believing that year by year, as, United States fishermen resort in greater numbers to the coasts of Newfoundland for the purpose of procuring bait and supplies, they will become more intimately acquainted with the resources of the inshore fisheries and their unlimited capacity for extension and development. As a matter of fact, United States vessels, have, since the Washington Treaty came into operation, been successfully engaged in these fisheries; and it is but reasonable to anticipate that, as the advantages to be derived from them become more widely known, larger numbers of United States fishermen will engage in them.



A participation by fishermen of the United States in the freedom of these waters must, notwithstanding their wonderfully reproductive capacity, tell materially on the local catch, and, while, affording to the United States fishermen a profitable employment, must seriously interfere with local success. The extra amount of bait also which is required for the supply of the United States demand for the bank fishery must have the effect of diminishing the supply of cod for the inshores, as it is well known that the presence of that fish is caused by the attraction offered by a large quantity of bait fishes, and as this quantity diminishes, the cod will resort in fewer number to the coast. The effect of this diminution may not in all probability be apparent for some years to come, and whilst United States fishermen will have the liberty of enjoying the fisheries for several years in their present teeming and remunerative state, the effects of overfishing may, after their right to participate in them has lapsed, become seriously prejudicial to the interests of the local fishermen.

## II. *The privilege of procuring bait and supplies, refitting, drying, transshipping, &c.*

Apart from the immense value to United States fishermen of participation in the Newfoundland inshore fisheries, must be estimated the important privilege of procuring bait for the prosecution of the bank and deep-sea fisheries, which are capable of unlimited expansion. With Newfoundland as a basis of operations, the right of procuring bait, refitting their vessels, drying and curing fish, procuring ice in abundance for the preservation of bait, liberty of transshipping their cargoes &c., an almost continuous prosecution of the bank fishery is secured to them. By means of these advantages, United States fishermen have acquired, by the Treaty of Washington, all the requisite facilities for increasing their fishing operations to such an extent as to enable them to supply the demand for fish food in the United States markets, and largely to furnish the other fish markets of the world, and thereby exercise a competition, which must inevitably prejudice Newfoundland exporters. It must be remembered in contrast with the foregoing, that United States fishing craft before the conclusion of the treaty of Washington, could only avail themselves of the coast of Newfoundland for obtaining a supply of wood and water for shelter and for necessary repairs in case of accident, *and for no other purpose whatever*; they therefore prosecuted the bank fishery under great disadvantages notwithstanding which, owing to the failure of the U. S. local fisheries, and the consequent necessity of providing a new fishing grounds, the bank fisheries have developed into a lucrative source of employment to the fishermen of the U. S. That this position is appreciated by those actively engaged in the bank fisheries is attested by the statements of competent witnesses, whose evidence will be laid before the Commission.

It is impossible to offer more convincing testimony as to the value to United States fishermen of securing the right to use the coast of Newfoundland as a basis of operations for the bank fisheries than is contained in the declaration of one who has been for six years so occupied, sailing from the ports of Salem and Gloucester, in Massachusetts, and who declares that it is of the greatest importance to

United States fishermen to procure from Newfoundland the bait necessary for those fisheries, and that such benefits can hardly be overestimated; that there will be, during the season of 1876, upwards of 200 United States vessels in Fortune Bay for bait, and that there will be upwards of 300 vessels from the United States engaged in the Grand Bank fishery; that owing to the great advantage of being able to run into Newfoundland for bait of different kinds, they are enabled to make four trips during the season; that the capelin, which may be considered as a bait, peculiar to Newfoundland, is the best which can be used for this fishery, and that a vessel would probably be enabled to make two trips during the capelin season, which extends over a period of about six weeks. The same experienced deponent is of opinion that the bank fisheries are capable of immense expansion and development, and that the privilege of getting bait on the coast of Newfoundland is indispensable for the accomplishment of this object.

As an instance of the demand for bait supplies derived from the Newfoundland inshore fisheries, it may be useful to state that the average amount of this article consumed by the French fishermen, who only prosecute the bank fisheries during a period of about six months, of the year, is from \$120,000 to \$160,000 annually. The herring, capelin, and squid amply meet these requirements and are supplied by the people of Fortune and Placentia Bays, the produce of the Islands of St. Pierre and Miquelon being insufficient to meet the demand.

It is evident from the above considerations that not only are the United States fishermen almost entirely dependent on the bait supply from Newfoundland, now open to them for the successful prosecution of the bank fisheries, but also that they are enabled, through the privileges conceded to them, by the treaty of Washington, to largely increase the number of their trips, and thus considerably augment the profits of the enterprise. This substantial advantage is secured at the risk, as before mentioned, of hereafter depleting the bait supplies of the Newfoundland inshores, and it is but just that a substantial equivalent should be paid by those who profit thereby.

We are therefore warranted in submitting to the commissioners that not only should the present actual advantages derived on this head by United States fishermen be taken into consideration, but also the probable effect of the concessions made in their favor. The inevitable consequence of these concessions will be to attract a larger amount of United States capital and enterprise following the profits already made in this direction, and the effect will be to inflict an injury on the local fishermen, both by the increased demand on their sources of supply and by competition with them in their trade with foreign markets.

### *III. The advantage of a free market for fish and fish-oil in Newfoundland.*

It might at first sight appear from the return of fish exports from the United States to Newfoundland, that this privilege was of little or no value; indeed, the duties, when collected on this article, were of insignificant amount. There is, however, an important benefit conferred by it on United States fishermen engaged in the Bank fisheries. In fishing on the banks in deep sea, heretofore large quantities of small fish were thrown overboard as comparatively useless when large



fish suitable for the United States market could be obtained in abundance; this practice was highly prejudicial to the fishing grounds.

Under the Washington Treaty, two objects are obtained: first a market for the small fish at remunerative prices in Newfoundland; and secondly, the preservation of the fishing grounds.

It is evident that, although at the present time United States fishermen have been in enjoyment of the privileges conferred by the Treaty of Washington only for a short period, and may not have availed themselves to the full extent of this privilege, the actual profits derived thereby, and which, in certain instances, will be substantiated before the commissioners by the evidence of competent witnesses, will be more fully appreciated during the remaining years of the existence of the right, and this item must form a part of the claim of Newfoundland against the United States.<sup>a</sup>

**AWARD OF THE FISHERY COMMISSION UNDER THE TREATY OF WASHINGTON, MAY 8TH, 1871.<sup>b</sup>**

The undersigned Commissioners appointed under Articles XXII and XXIII of the Treaty of Washington of the 8th of May, 1871, to determine, having regard to the privileges accorded by the United States to the subjects of Her Britannic Majesty, as stated in Articles XIX and XXI of said treaty, the amount of any compensation which in their opinion ought to be paid by the Government of the United States to the Government of Her Britannic Majesty, in return for the privileges accorded to the citizens of the United States under Article XVIII of the said treaty;

Having carefully and impartially examined the matters referred to them according to justice and equity, in conformity with the solemn declaration made and subscribed by them on the fifteenth day of June, one thousand eight hundred and seventy-seven:

Award the sum of five millions five hundred thousand dollars, in gold, to be paid by the Government of the United States to the Government of Her Britannic Majesty in accordance with the provisions of the said treaty.

Signed at Halifax, this twenty-third day of November, one thousand eight hundred and seventy-seven.

MAURICE DELFOSSE.

A. T. GALT.

The United States Commissioner is of opinion that the advantages accruing to Great Britain under the Treaty of Washington are greater than the advantages conferred on the United States by said treaty, and he cannot therefore concur in the conclusions announced by his colleagues.

And the American Commissioner deems it his duty to state further that it is questionable whether it is competent for the board to make an award under the treaty, except with the unanimous consent of its members.

E. H. KELLOGG, *Commissioner*.

<sup>a</sup> Ib. p. 103-106.

<sup>b</sup> Ib. p. 76.

## RECIPROCAL TRADE WITH BRITISH COLONIES.

*Extract from Haliburton's "Historical and Analytical Account of Nova Scotia," pub. 1829.*

## CHAPTER VIII.

AN HISTORICAL SKETCH OF COLONIAL TRADE—TABLES EXHIBITING COMPARATIVE STATEMENTS OF THE TRADE OF NOVA-SCOTIA AT DIFFERENT PERIODS—REVENUE, &C.

When America was first discovered, the motives which induced individuals to migrate to the Colonies, were, in some instances, the mines and precious metals, and in others relief from religious persecution; but the parent state had no definite object in view. Public opinion was much divided, as to the expediency of engaging in these transatlantic settlements. Hume informs us, that "speculative reasoners during that early age, raised many objections to the planting of these remote Colonies, and foretold that after draining the mother countries of inhabitants, they would soon shake off her yoke, and erect an independent government in America." The British Colonies, therefore, owe their origin more to fortuitous circumstances and civil commotions, than to the wisdom or policy of the government of that day, and the opinion which is generally entertained, that they were founded for the extension of commerce, and for markets for British Goods, is erroneous. So late as 1622, the exports of England were £2,320,436, and the imports £2,619,315. We may also form some opinion of the state of her manufactures, by the condition of her agriculture, inasmuch as it furnishes the materials for the labour of art. The sudden transitions so often mentioned by historians, from the lowest to the highest price of grain at that time, and the prodigious inequalities in its value in different years, are sufficient proof that the produce entirely depended on the seasons, and that skill had done nothing to fence against the injuries of the heavens. The nation was dependent on Foreigners for bread, and if ever the supplies from the Baltic, or from France, were interrupted, the bad consequences were felt by the whole kingdom. Manufactures were few, and those but indifferent. Naval stores and ships were both supplied by their neighbours. Germany furnished all articles of metal, even to nails. Wine, paper, linens, and an infinite variety of other articles, came from France. Markets, therefore, were not wanting to those who were themselves importers. From this it is obvious, that accidental circumstances and not political foresight, gave birth to the Anglo American Provinces; and an attentive perusal of the history of that time, will convince us that the restrictions of Colonial Trade owe their origin to the same causes, and not to national *avarice or illiberality*. The first European settlements were scattered and weak, and it became necessary to shun the observations of strangers, who might be invited to attack, by the certainty of success, or to plunder, by the knowledge of the value of the booty. Boundaries were unsettled and titles insecure, and possession informal or incomplete; and as the interests of the Colonies of the several nations, and their respective claims, were adverse, the inclinations of the contending parties became hostile, and little or no mutual inter-



course was allowed. This spirit of jealous exclusion, though natural at first, grew confirmed by habit, and in time gave rise to that refined and complicated system of monopoly, with which the trade of every American colony has been fettered and restrained—Spain gave the first example, and in the exclusion of foreigners, took to herself not only the trade of her colonies, but even the manufacture of the articles of primary necessity for their supply. She would not permit them to make any efforts in industry, that might interfere with her own productions and these restrictions extended to the culture of the grape and the olive, which were inhibited by severe penalties. Great Britain soon perceiving that great advantages were to be derived from the commerce of America, followed, with many liberal modifications, the policy of Spain, and monopoly became the principle of her Colonial intercourse. This was three-fold—monopoly of supply, monopoly of provincial produce, and monopoly of manufacture. By the first, the Colonists could not resort to foreign markets.—By the second they were obliged to carry their staple commodities to the mother country; and by the third, to carry them in a raw state to be manufactured, and then sent back to them for their own consumption.

In practice many indulgencies have, from time to time, been extended to her transatlantic possessions; but in theory, this principle has been carried to the most unlimited and extravagant extent. The Earl of Chatham asserted in Parliament “that the British Colonists in America had no right to manufacture even a nail for a horse-shoe.”

To render the account of the trade, at present enjoyed by this Province, intelligible to those not engaged in mercantile pursuits, it will be necessary, and I hope acceptable to the generality of readers, to give, as briefly as is consistent with perspicuity, an historical sketch of the origin and principal changes of the commercial system of the Colonies, previous to the new navigation laws. First—as regarded the trade between them and Europe; secondly, between the Colonies themselves; and thirdly between them and the United States.

First. As it regarded the trade between them and Europe, the foundation upon which this intricate system was built, was the *famous statute*, called, by way of *eminence*, the navigation act, the rudiments of which were framed in 1650. The resistance offered by Barbadoes to Oliver Cromwell, and its attachment to Charles the 2nd, occasioned the prohibition of all foreign ships from trading with the English plantations, and of the importation of Goods into England or its dependencies, in any other than English bottoms, or in ships of that European nation of which the merchandize imported was the genuine produce and manufacture. At the restoration, notwithstanding the origin of the act, those provisions were continued by the 12th C. 2nd, Chap. 18, with this very material addition, that the master and three fourths of the crew should be English subjects, and that certain articles, therein enumerated, the production of any English Colony, in Asia, Africa, or America, should not be exported to any place, except to some other English plantation, or to England, Ireland, Wales or Berwick. Three years afterwards these restrictions were extended and strengthened by the 15th C. 2d, Chap. 7, which, after stating that plantations were formed of citizens of the Mother Country, declares the motive of the act to be “the maintaining a greater correspondence and kindness between the subjects at home,

and those in the plantations; keeping the Colonies in a firmer dependence upon the Mother Country, making them yet more beneficial and advantageous to it, in the further employment and increase of English shipping, vent of English manufactures and commodities, rendering the navigation to and from them more safe and cheap; and making this Kingdom a staple not only of the commodities of the plantations, but also of the commodities of other countries and places for the supply of them; it being the usage of other nations to keep their plantation trade to themselves."

This Act ordained that no commodity of the growth or production of Europe, should be imported into the British plantations, but such as were laden and put on board in England, Wales, or Berwick, and in English shipping, navigated according to law, and carried directly to the colonies. With the exception of salt for the fisheries, wines from Madeira and the Azores, and horses and victuals from Ireland and Scotland. By a subsequent act, passed in the 7th and 8th Willm. 3d, c. 22d, the produce of the colonies was not permitted to be shipped to Ireland or Scotland, unless first landed in England, and its importation was restricted to ships built in England, Ireland, or the Plantations, wholly owned by English subjects, and navigated according to Law.—Provision with various regulations to prevent counterfeit certificates and other frauds.

Amongst other regulations for securing the due execution of the navigation acts, a duty was imposed upon the principal "*enumerated*" commodities, when not intended to be conveyed to Great Britain; for it had been found, that under colour of shipping the articles for another British colony or Plantation, they were often vended at sea to the shipping of other nations, or transported to Europe direct. These articles, from having been particularly specified in the acts, have been very generally distinguished from those not named by the common appellation of "*enumerated*" articles, and were of two sorts—first, such as were either the peculiar produce of America, or as could not be, or at least were not, produced in the mother country.—Secondly, such as were not the peculiar produce of America, but which were or might be produced in the mother country, though not in such quantities as to afford a sufficient supply, and were therefore obtained from European countries. By confining the enumerated articles to the home markets, the merchants were not only enabled to buy them cheaper in the plantations, and consequently sell them at a better profit at home, but to establish between the plantations and foreign countries an advantageous carrying trade, of which Great Britain was necessarily the centre or emporium, as the European country into which the articles were first to be imported. The importation of articles of the second kind was so managed as to interfere, not with the sale of those of the same kind which were produced at home, but with the sale of those imported from foreign countries; because, by means of proper duties, they might be rendered always dearer than the former, and yet much cheaper than the latter; This was intended to operate as a discouragement to the produce of some foreign countries, with which the balance of trade was held to be unfavourable to Great Britain. These, with many other intermediate and subsequent statutes, in amendment of, and addition thereto, completed this artificial and restrictive system.



It was deemed expedient, however, to depart in some measure from the severity of these laws, by permitting the exportation of most of the enumerated commodities, from the sugar colonies direct to Malta and Gibralter, and allowing the exportation of a great variety of European articles from Malta and Gibralter, direct to the said sugar plantations, and to Newfoundland, Bermuda, and the colonies in North America. To extend also the trade of the North American colonies, and encourage the fisheries; the lading of other articles was permitted in ports of Europe, south of Cape Finisterre, on board ships arriving from the said colonies, either with articles the production thereof, or with British American fish. Such was the nature of the law and policy regarding the trade with Europe; and as none of the countries south of Cape Finisterre were manufacturing countries, it was not considered that any injury could arise, in consequence of a departure from the colonial system in their favour.

Secondly. With respect to the trade between the Colonies themselves, both in the enumerated and non-enumerated commodities, it was perfectly free, except as to hats, wool and woolen manufactures, the exportation of which was wholly prohibited to any place. This prohibition was intended to prevent the establishment of any manufactories of such commodities in the British colonies, to the injury of the export trade of the mother country.

Fourthly [*sic*]. Ever since the Independence of the "United States" the Trade of the British Colonies has been subject to peculiar limitations and restrictions with respect to its intercourse with that Country. Having broke off their political connection with Great Britain, and become the rivals of England in trade and manufactures, it was thought necessary to confine the imports to Tobacco, Naval Stores, and such articles as the British Colonies did not produce in sufficient quantities for their own use and consumption, and which could not be obtained elsewhere; and to confine the exports to some enumerated commodities and goods, not prohibited to Foreign countries in Europe; such articles and goods being imported and exported by British subjects and in British ships, except as to importations into Bermuda, of the articles first mentioned, and exportations from the Bahamas of the article of Salt.

To prevent a circuitous trade in the articles permitted to be imported direct, articles of the like description were prohibited to be imported from the islands and Colonies under the dominion of "Foreign European Sovereigns or States," except in cases of emergency, for the supply of the inhabitants, or from the "Portuguese Colonies," but such importations were directed to be made by British subjects and in British ships. Such are the leading features of the old commercial monopoly of the Colonies, which ran through no less than twenty-nine Acts of Parliament, from the year 1660, to the unfortunate period of 1764; but the liberal and enlightened policy of modern times has questioned the propriety and utility of these restrictive measures; and the late administrations have, by several Acts of Parliament, left the trade of the colonies as unfettered as is consistent with the true interests of England, and the proper dependancy of these distant parts of the Empire.

After some experiments, not essential to be detailed, made by the means of free ports, the celebrated "new navigation laws, 4 Geo. 4, Chap. 44 and 45," were passed. The first regulated the trade of the Colonies in America or the West Indies, with other parts of America

or the West Indies—and the second regulated the trade of the Colonies in America or the West Indies, with other parts of the world. The former, after repealing a number of acts, either in whole or in part, permitted the importation from *any* foreign country in North or South America, or West Indies, into colonial *free* ports, certain enumerated articles, consisting chiefly of bread stuff, provision, lumber, live stock, seeds and raw materials, subject to specified duties; which were, by the act, appropriated to the use of the colonies where they were to be collected—with a proviso that the importation should be made on British bottoms, or vessels bona fide the build of and owned by the inhabitants of the country of which the articles imported were the growth or manufacture. It also permitted the exportation from the said free ports, of any article of the *growth or manufacture of any of His Majesty's Dominions, or any other article legally imported into the said Ports*, provided the vessels carrying the same, whether British or Foreign, proceeded direct to the country in America or the West Indies to which they respectively belonged. The other acts, regulating the trade between the Colonies and Europe, permitted the exportation in British built vessels, owned and navigated according to law, of any article, the growth or manufacture of said Colony, or legally imported into the same direct, to any foreign port in Europe or Africa, or to Gibraltar, the Island of Malta, or the dependencies thereof, or the Islands of Guernsey, Jersey, Alderney, or Sark; it also authorised the importation from any port in the above-mentioned countries, of certain articles enumerated in a schedule annexed to the Act, on the payment of duties, to be applied in a similar manner as those arising under the other act.

The very liberal provisions of these two acts were afterwards consolidated, with many valuable improvements, into one statute, the 6 Geo. 4th, Cap. 114, entitled “an Act to regulate the trade of the British possessions abroad;” which took effect on the 5th of January, 1826.

This act commences by directing that no goods, except the produce of the fisheries in British ships, be exported from any of the British possessions in America, by sea, from or to any place other than the United Kingdom and its possessions, except to and from certain free ports, the number of which his Majesty is empowered to increase, of which Halifax was one.

Permission is granted, by the Act, to the ships of any nation having colonies that shall grant to British ships a similar privilege, and to them not having colonies that should place the commerce and navigation of Great Britain and her possessions, on the footing of the most favoured nation, to import into any of the British possessions abroad, from the country to which they belong, goods, the produce of those countries, and to export goods from such possessions, to be carried to any foreign country what-ever. Instead of enumerating the articles which may be imported, the act contains a brief “table of restrictions.”

After which it prescribes a table of duties on the Imports, chiefly advalorem, and directs the Collector to pay the produce thereof over to the Colonial Treasurer, to be appropriated by the General Assembly. One of the most important clauses, is that which establishes certain of the Free Ports, viz.—Kingston, in the island of Jamaica, Halifax, in Nova Scotia, Quebec, in Canada, Saint John, in New Brunswick, and Bridge Town, in the Island of Barbadoes—to be



Warehousing ports, for all goods which may be legally imported into them; and permits any such articles, under certain regulations, to be warehoused without payment of any duty on the first entry thereof. These, with many enactments of minor importance, constitute the present navigation law of the Colonies. Thus ended colonial monopoly, and with it, it is to be hoped those ungenerous feelings which led many persons in Great Britain to suppose, that although members of the same Empire, their interests were distinct from ours—that any benefit derived to us, from an intercolonial trade, was an indirect disadvantage to them; and that the poverty of the colonies, which that very monopoly created, while it rendered us sometimes burthensome and often importunate, was a reason for viewing us rather in the light of needy dependents than good customers.

The benefit of this extension of trade, and the soundness of the principle on which it is founded, will soon appear in the increase of the national shipping—in the impulse given to colonial enterprise—in the growing demand for British Manufactures, and in more punctual remittances. It will add another proof of the fact, that the independence of the United States so clearly demonstrated, that these American Provinces become better customers to Great Britain, in proportion to the means they possess of enriching themselves, and that their importations will always keep pace with the increase of the other branches of colonial trade.

But there is another and much more important result from this enlightened policy. It will tend to strengthen the bond of union between the mother country and her transatlantic possessions, if not from a principle of gratitude, at least from those feelings of interest, which more or less actuate all mankind.

It must be obvious to every colonist, that the political dependence of his country is little more than nominal—that he has much to hazard by any change of Government, and little to hope for—that while he is indebted to Great Britain for the free constitution which has been so liberally granted to him, the most perfect political protection, and as much commercial freedom as he can desire; he is not called upon to bear any portion of the public burden, or to contribute in the smallest degree to the national defence.

On a comparison of his situation with that of an inhabitant of the United States, he can discover nothing desirable—either political, civil, or religious, which he does not enjoy equally with him; while a Government more congenial to his feelings, a total exemption from taxation, a state of society more permanent and more agreeable, must convince him that he has no inducement to become a citizen of a Republican Government.

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*British Order in Council, for regulating the Commercial Intercourse between The United States and the British Colonial Possessions.—5th November, 1830.*

At the Court of St. James, the 5th day of November, 1830. Present,  
The King's Most Excellent Majesty in Council.

Whereas by a certain Act of Parliament, passed in the 6th Year of the Reign of His Majesty King George the Fourth, entitled, "An Act to regulate the trade of the British Possessions Abroad", after

reciting that, "by the Law of Navigation, Foreign Ships are permitted to import into any of the British Possessions Abroad, from the Countries to which they belong, goods, the produce of those Countries, and to export goods from such Possessions, to be carried to any Foreign Country whatever, and that it is expedient that such permission should be subject to certain conditions;" it is, therefore, enacted, "that the privileges thereby granted to Foreign Ships shall be limited to the Ships of those Countries which, having Colonial Possessions, shall grant the like privileges of trading with those Possessions to British Ships, or which, not having Colonial Possessions, shall place the Commerce and Navigation of this Country, and of its Possessions Abroad, upon the footing of the most favoured Nation, unless His Majesty, by His Order in Council, shall, in any case, deem it expedient to grant the whole, or any of such privileges, to the Ships of any Foreign Country, although the conditions aforesaid shall not in all respects be fulfilled by such Foreign Country:"

And whereas by a certain Order of His said late Majesty in Council, bearing date the 27th day of July, 1826, after reciting, that the conditions mentioned and referred to in the said Act of Parliament, had not in all respects been fulfilled by the Government of the United States of America, and that, therefore, the privileges so granted as aforesaid by the Law of Navigation to Foreign Ships, could not lawfully be exercised or enjoyed by the Ships of The United States aforesaid, unless His Majesty, by His Order in Council, should grant the whole or any of such privileges to the Ships of The United States aforesaid: His said Late Majesty did, in pursuance of the powers in Him vested by the said Act, grant the privileges aforesaid to the Ships of the said United States; but did thereby provide and declare, that such privileges should absolutely cease and determine in His Majesty's Possessions in the West Indies and South America, and in certain other of His Majesty's Possessions Abroad, upon and from certain days in the said Order for that purpose appointed, and which are long since passed:

And whereas, by a certain other Order of His said late Majesty in Council, bearing date the 16th of July, 1827, the said last mentioned order was confirmed; and whereas, in pursuance of the Acts of Parliament, in that behalf made and provided, His said late Majesty, by a certain Order in Council, bearing date the 21st day of July, 1823, and by the said Order in Council, bearing date the 27th day of July, 1826, was pleased to order, that there should be charged on all Vessels of the said United States, which should enter any of the Ports of His Majesty's Possessions in the West Indies or America, with articles of the growth, produce, or manufacture, of the said States, certain Duties of Tonnage and of Customs therein particularly specified:

And whereas it hath been made to appear to His Majesty in Council, that the restrictions heretofore imposed by the Laws of the United States aforesaid, upon British Vessels, navigated between the said States and His Majesty's Possessions in the West Indies and America, have been repealed, and that the Discrimination Duties of Tonnage and of Customs, heretofore imposed by the Laws of the said United States, upon British Vessels and their Cargoes, entering the Ports of the said States from His Majesty's said Possessions, have also been



repealed, and that the Ports of the United States are now open to British Vessels and their Cargoes, coming from His Majesty's Possessions aforesaid; His Majesty doth, therefore, with the advice of His Privy Council, and in pursuance and exercise of the powers so vested in Him, as aforesaid, by the said Act, so passed in the 6th Year of the Reign of His said late Majesty, or by any other Act or Acts of Parliament, declare, that the said recited Orders in Council, of the 21st day of July, 1823, and of the 27th day of July, 1826, and the said Order in Council, of the 16th day of July, 1827 (so far as such last mentioned Order relates to the said United States) shall be, and the same are, hereby respectively revoked:

And His Majesty doth, further, by the advice aforesaid, and in pursuance of the powers aforesaid, declare that the Ships of and belonging to the said United States of America, may import from The United States aforesaid, into the British Possessions Abroad, Goods the produce of those States, and may export Goods from the British Possessions Abroad to be carried to any Foreign Country whatever.

And the Right Honourable the Lords Commissioners of His Majesty's Treasury, and the Right Honourable Sir. George Murray, one of His Majesty's Principal Secretaries of State, are to give the necessary directions herein, as to them may respectively appertain.

JAS. BULLER.

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*'Act of Congress of May 29, 1830.*

(4 Stat. L., chap. 207.)

AN ACT To amend the acts regulating the commercial intercourse between the United States and certain colonies of Great Britain.

*Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* That whenever the President of the United States shall receive satisfactory evidence that the government of Great Britain will open the ports in its colonial possessions in the West Indies, on the continent of South America, the Bahama Islands, the Caicos, and the Bermuda or Somer Islands, to the vessels of the United States, for an indefinite or for a limited term; that the vessels of the United States and their cargoes, on entering the colonial ports aforesaid, shall not be subject to other or higher duties of tonnage or impost, or charges of any other description, than would be imposed on British vessels or their cargoes, arriving in said colonial possessions from the United States; that the vessels of the United States may import into the said colonial possessions from the United States any article or articles which could be imported in a British vessel into the said possessions from the United States; and that the vessels of the United States may export from the British colonies aforementioned, to any country whatever, other than the dominions or possessions of Great Britain, any article or articles that can be exported therefrom in a British vessel, to any country other than the British dominions or possessions as aforesaid; leaving the commercial intercourse of the United States, with all other parts of the British dominions or possessions, on a footing not less favorable to the United States, than it now is, and that then, and in such case, the President of the United States shall be, and he

is hereby authorized at any time before the next session of Congress, to issue his proclamation, declaring that he has received such evidence; and, thereupon, from the date of such proclamation, the ports of the United States shall be opened, indefinitely or for a fixed term, as the case may be, to British vessels coming from the said British colonial possessions, and their cargoes, subject to no other or higher duty of tonnage or impost, or charge of any description whatever, than would be levied on the vessels of the United States, or their cargoes, arriving from the said British possessions; and it shall be lawful for the said British vessels to import into the United States, and to export therefrom, any article or articles which may be imported or exported in vessels of the United States: and the act, entitled "An act concerning navigation," passed on the eighteenth day of April, one thousand eight hundred and eighteen; an act supplementary thereto, passed on the fifteenth day of May, one thousand eight hundred and twenty, and an act, entitled "An act to regulate the commercial intercourse between the United States, and certain British ports," passed on the first day of March, one thousand eight hundred and twenty-three, are, in such case, hereby declared to be suspended, or absolutely repealed, as the case may require.

SEC. 2. And be it further enacted, That, whenever the ports of the United States shall have been opened, under the authority given in the first section of this act, British vessels and their cargoes shall be admitted to an entry in the ports of the United States from the islands, provinces, or colonies, of Great Britain, on or near the North American continent, and north or east of the United States.

Approved, May 29, 1830.

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*President's Proclamation of October 5, 1830, relative to trade with the British Colonies.*

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.—A PROCLAMATION.

Whereas by an act of the Congress of the United States passed on the 29th day of May, 1830, it is provided that whenever the President of the United States shall receive satisfactory evidence that the Government of Great Britain will open the ports in its colonial possessions in the West Indies, on the continent of South America, the Bahama Islands, the Caicos, and the Bermuda or Somer Islands to the vessels of the United States for an indefinite or for a limited term; that the vessels of the United States, and their cargoes, on entering the colonial ports aforesaid, shall not be subject to other or higher duties of tonnage or impost or charges of any other description than would be imposed on British vessels or their cargoes arriving in the said colonial possessions from the United States; that the vessels of the United States may import into the said colonial possessions from the United States any article or articles which could be imported in a British vessel into the said possessions from the United States; and that the vessels of the United States may export from the British colonies aforementioned, to any country whatever other than the dominions or possessions of Great Britain, any article or articles that can be exported therefrom in a British vessel to any



country other than the British dominions or possessions as aforesaid, leaving the commercial intercourse of the United States with all other parts of the British dominions or possessions on a footing not less favorable to the United States than it now is—that then, and in such case, the President of the United States shall be authorized, at any time before the next session of Congress, to issue his proclamation declaring that he has received such evidence, and that thereupon, and from the date of such proclamation, the ports of the United States shall be opened indefinitely or for a term fixed, as the case may be, to British vessels coming from the said British colonial possessions, and their cargoes, subject to no other or higher duty of tonnage or impost or charge of any description whatever than would be levied on the vessels of the United States or their cargoes arriving from the said British possessions; and that it shall be lawful for the said British vessels to import into the United States or their cargoes arriving from the said British possessions; and that it shall be lawful for the said British vessels to import into the United States and to export therefrom any article or articles which may be imported or exported in vessels of the United States; and that the act entitled “An act concerning navigation,” passed on the 18th day of April, 1818, an act supplementary thereto, passed the 15th day of May, 1820, and an act entitled “An act to regulate the commercial intercourse between the United States and certain British ports,” passed on the 1st day of March, 1823, shall in such case be suspended or absolutely repealed, as the case may require; and

Whereas by the said act it is further provided that whenever the ports of the United States shall have been opened under the authority thereby given, British vessels and their cargoes shall be admitted to an entry in the ports of the United States from the islands, provinces, or colonies of Great Britain on or near the North American continent and north or east of the United States; and

Whereas satisfactory evidence has been received by the President of the United States that whenever he shall give effect to the provisions of the act aforesaid the Government of Great Britain will open for an indefinite period the ports in its colonial possessions in the West Indies, on the continent of South America, the Bahama Islands, the Caicos, and the Bermuda or Somer Islands to the vessels of the United States, and their cargoes, upon the terms and according to the requisitions of the aforesaid act of Congress:

Now, therefore, I, Andrew Jackson, President of the United States of America, do hereby declare and proclaim that such evidence has been received by me, and that by the operation of the act of Congress passed on the 29th day of May, 1830, the ports of the United States are from the date of this proclamation open to British vessels coming from the said British possessions, and their cargoes, upon the terms set forth on the said act. The act entitled “An act concerning navigation,” passed on the 18th day of April, 1818, the act supplementary thereto, passed the 15th day of May, 1820, and the act entitled “An act to regulate the commercial intercourse between the United States and certain British ports,” passed the 1st day of March, 1823, are absolutely repealed, and British vessels and their cargoes are admitted to an entry in the ports of the United States from the islands, provinces, and colonies of Great Britain on or near the North American continent and north or east of the United States.

Given under my hand, at the city of Washington, the 5th day of October, A. D. 1830, and the fifty-fifth of the Independence of the United States.

ANDREW JACKSON.

By the President:

M. VAN BUREN,  
*Secretary of State.*

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EXTRACTS FROM THE REVISED STATUTES OF THE UNITED STATES, 1878, RELATING TO THE REGULATION OF COMMERCE AND NAVIGATION.<sup>a</sup>

TITLE XLVIII.

REGULATION OF COMMERCE AND NAVIGATION.

Chapter One.

*Registry and Recording.*

\* \* \* \* \*

SEC. 4131. Vessels registered pursuant to law and no others, except such as shall be duly qualified according to law for carrying on the coasting or fishing trade, shall be deemed vessels of the United States, and entitled to the benefits and privileges appertaining to such vessels; but no such vessel shall enjoy such benefits and privileges longer than it shall continue to be wholly owned by a citizen or citizens of the United States or a corporation created under the laws of any of the States thereof, and be commanded by a citizen of the United States. And all the officers of vessels of the United States who shall have charge of a watch, including pilots, shall in all cases be citizens of the United States. The word "officers" shall include the chief engineer and each assistant engineer in charge of a watch on vessels propelled wholly or in part by steam; and after the first day of January, eighteen hundred and ninety-seven, no person shall be qualified to hold a license as a commander or watch officer of a merchant vessel of the United States who is not a native-born citizen, or whose naturalization as a citizen shall not have been fully completed. [*As amended by Sec. 1, Chap. 255, Act of Congress of May 28, 1896.*]

SEC. 4132. Vessels built within the United States, and belonging wholly to citizens thereof, and vessels which may be captured in war by citizens of the United States, and lawfully condemned as prize, or which may be adjudged to be forfeited for a breach of the laws of the United States, being wholly owned by citizens, and no others, may be registered as directed in this Title.

SEC. 4133. No vessel shall be entitled to be registered, or, if registered, to the benefits of registry, if owned, in whole or in part by any citizen of the United States who usually resides in a foreign country, during the continuance of such residence, unless such citizen be a consul of the United States, or an agent for and a partner in some house of trade or copartnership, consisting of citizens of the United States actually carrying on trade within the United States.<sup>b</sup>

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<sup>b</sup> Repealed by sec. 16, chap. 389, act of Congress of March 3, 1897.

<sup>a</sup> See also pp. 1300, 1301.



SEC. 4134. No vessel shall be entitled to be registered as a vessel of the United States, or, if registered, to the benefits of registry, if owned in whole or in part by any person naturalized in the United States, and residing for more than one year in the country from which he originated, or for more than two years in any foreign country, unless such person be a consul or other public agent of the United States. Nothing contained in this section shall be construed to prevent the registering anew of any vessel before registered, in case of a sale thereof in good faith to any citizen resident in the United States; but satisfactory proof of the citizenship of the person on whose account a vessel may be purchased shall be exhibited to the collector, before a new register shall be granted for such vessel.<sup>a</sup>

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SEC. 4142. In order to the registry of any vessel, an oath shall be taken and subscribed by the owner, or by one of the owners thereof, before the officer authorized to make such registry, declaring, according to the best of the knowledge and belief of the person so swearing, the name of such vessel, her burden, the place where she was built, if built within the United States, and the year in which she was built; or that she has been captured in war, specifying the time, by a citizen of the United States, and lawfully condemned as prize, producing a copy of the sentence of condemnation, authenticated in the usual forms; or that she has been adjudged to be forfeited for a breach of the laws of the United States, producing a like copy of the adjudication of forfeiture; and declaring his name and place of abode, and if he be the sole owner of the vessel, that such is the case; or if there be another owner, that there is such other owner, specifying his name and place of abode, and that he is a citizen of the United States, and specifying the proportion belonging to each owner; and where an owner resides in a foreign country, in the capacity of a consul of the United States, or as an agent for and a partner in a house or copartnership consisting of citizens of the United States, actually carrying on trade within the United States, that such is the case, that the person so swearing is a citizen of the United States, and that there is no subject or citizen of any foreign prince or state, directly or indirectly, by way of trust, confidence, or otherwise, interested in such vessel, or in the profits or issues thereof; and that the master thereof is a citizen, naming the master, and stating the means whereby or manner in which he is a citizen.

SEC. 4143. If any of the matters of fact alleged in the oath taken by an owner to obtain the registry of any vessel, which within the knowledge of the party so swearing are not true, there shall be a forfeiture of the vessel, together with her tackle, apparel, and furniture, in respect to which the oath shall have been made, or of the value thereof, to be recovered, with the costs of suit, of the person by whom the oath was made.

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SEC. 4165. A vessel registered pursuant to law, which by sale has become the property of a foreigner, shall be entitled to a new register upon afterwards becoming American property, unless it has been enlarged or undergone change in build outside of the United

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<sup>a</sup> Repealed by sec. 16, chap. 389, act of Congress of March 3, 1897.

States. [*As amended by Sec. 10, Chap. 389, Act of Congress of March 3, 1897*].

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SEC. 4171. When the master or person having the charge or command of a registered vessel is changed, the owner, or one of the owners, or the new master of such vessel, shall report such change to the collector of the district where the same has happened, or where the vessel shall first be after the same has happened, and shall produce to him the certificate of registry of such vessel, and shall make oath, showing that such new master is a citizen of the United States, and the manner in which or means whereby he is so a citizen. Thereupon the collector shall indorse upon the certificate of registry a memorandum of such change, specifying the name of such new master, and shall subscribe the memorandum with his name; and if other than the collector of the district by whom the certificate of registry was granted, shall transmit a copy of the memorandum to him, with notice of the particular vessel to which it relates; and the collector of the district, by whom the certificate shall have been granted, shall make a like memorandum of such change in his book of registers, and shall transmit a copy thereof to the Register of the Treasury. If the change is not reported, or if the oath is not taken, as above directed, the registry of such vessel shall be void, and the master or person having the charge or command of her shall be liable to a penalty of one hundred dollars.

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SEC. 4189. Whenever any certificate of registry, enrollment, or license, or other record or document granted in lieu thereof, to any vessel, is knowingly and fraudulently obtained or used for any vessel not entitled to the benefit thereof, such vessel, with her tackle, apparel, and furniture, shall be liable to forfeiture.

SEC. 4190. No sea-letter or other document certifying or proving any vessel to be the property of a citizen of the United States shall be issued, except to vessels duly registered, or enrolled and licensed as vessels of the United States, or to vessels which shall be wholly owned by citizens of the United States, and furnished with or entitled to sea-letters or other custom-house documents.

## TITLE L.

### REGULATION OF VESSELS IN DOMESTIC COMMERCE.

SEC. 4311. Vessels of twenty tons and upward, enrolled in pursuance of this Title, and having a license in force, or vessels of less than twenty tons, which, although not enrolled, have a license in force, as required by this Title, and no others, shall be deemed vessels of the United States entitled to the privileges of vessels employed in the coasting-trade or fisheries.

SEC. 4312. In order for the enrollment of any vessel, she shall possess the same qualifications, and the same requirements in all respects shall be complied with, as are required before registering a vessel; and the same powers and duties are conferred and imposed upon all officers, respectively, and the same proceedings shall be had,



in enrollment of vessels, as are prescribed for similar cases in registering; and vessels enrolled, with the masters or owners thereof, shall be subject to the same requirements as are prescribed for registered vessels.

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“SEC. 4320. No licensed vessel shall be employed in any trade whereby the revenue laws of the United States shall be defrauded. The master of every such vessel shall swear that he is a citizen of the United States, and that such license shall not be used for any other vessel or any other employment than that for which it was specially granted, or in any trade or business whereby the revenue of the United States may be defrauded; and if such vessels be less than twenty tons burden, the husband or managing owner shall swear that she is wholly the property of citizens of the United States; whereupon it shall be the duty of the collector of the district comprehending the port whereto such vessel may belong to grant a license.” [*As amended by sec. 3, chap. 24, Act of Congress of January 16, 1895.*]

SEC. 4321. The form of a license for carrying on the coasting-trade or fisheries shall be as follows:

“License for carrying on the (here insert ‘coasting trade,’ ‘whale-fishery,’ ‘mackerel-fishery,’ or ‘cod-fishery,’ as the case may be).

“In pursuance of Title L, ‘Regulation of Vessels in Domestic Commerce,’ of the Revised Statutes of the United States, (inserting here the name of the husband or managing owner, with his occupation and place of abode, and the name of the master, with the place of his abode), having given bond that the (insert here the description of the vessel, whether ship, brigantine, snow, schooner, sloop, or whatever else she may be), called the (insert here the vessel’s name), whereof the said (naming the master) is master, burden (insert here the number of tons, in words) tons, as appears by her enrollment, dated at (naming the district, day, month and year, in words at length, but if she be less than twenty tons, insert, instead thereof, ‘proof being had of her admeasurement’), shall not be employed in any trade, while this license shall continue in force, whereby the revenue of the United States shall be defrauded, and having also sworn (or affirmed) that this license shall not be used for any other vessel, or for any other employment, than is herein specified, license is hereby granted for the said (inserting here the description of the vessel) called the (inserting here the vessel’s name), to be employed in carrying on the (inserting here ‘coasting trade,’ ‘whale-fishery,’ ‘mackerel-fishery,’ or ‘cod-fishery,’ as the case may be), for one year from the date hereof, and no longer. Given under my hand and seal, at (naming the said district), this (inserting the particular day) day of (naming the month), in the year (specifying the number of the year in words at length”).

EXTRACTS FROM REPORT ON THE PRINCIPAL FISHERIES OF  
THE AMERICAN SEAS; BY LORENZO SABINE.\*

CUSTOM-HOUSE, BOSTON,  
*Collector's Office, December 10, 1852.*

SIR: I transmit herewith a report on the fisheries, by Lorenzo Sabine, esq., which he has prepared for the department.

I am, sir, very respectfully, your obedient servant,

P. GREELY, Jr.,  
*Collector.*

Hon. THOMAS CORWIN,  
*Secretary of the Treasury, Washington, D. C.*

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FRAMINGHAM, *December 6, 1852.*

SIR: I submit herewith the report which I have prepared, in accordance with your instructions of the 2d of February last.

More than twenty years have elapsed since I formed the design of writing a work on the American fisheries, and commenced collecting materials for the purpose. My intention embraced the whale fishery of our flag in distant seas; the fisheries of our own coasts, lakes, and rivers, as well as those which we prosecute within British jurisdiction, under treaty stipulations; and the fisheries of the Indian tribes within the limits of the United States. That a *part* of my plan has now been executed, is owing entirely to the interest and zeal which you have manifested in the undertaking.

Our first interview upon the subject was caused by a communication to you from the Treasury Department, in which the Secretary conveyed a request that a report of limited size should be furnished from your own office. During our conversation, you expressed a desire to look over my collection of documents and state-papers, and they were accordingly deposited with you for examination. On returning them to me, you were pleased to give a favorable opinion of their value, and to say that you would at once suggest and recommend to Mr. Corwin the expediency of employing me to write a paper somewhat more elaborate than he had contemplated.

Subsequently, you announced to me that the Secretary promptly adopted your views, and submitted the whole matter to your discretion. I undertook the task with all my heart, and with a determination to complete it, if possible, in a manner to meet the expectations of the department and of yourself. It is finished. Whatever the judgment pronounced upon it, I have still to express my grateful acknowledgments to Mr. Corwin for the kindness which has allowed the partial gratification of a long-cherished wish, and to you for the original suggestion, for your countenance, your sympathy, and your personal supervision.

If I may venture to hope that, as the result of my labors, an important branch of national industry will hereafter be better understood and

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\* All footnotes printed with these extracts are as they appear in the original report.



appreciated by such of our countrymen as have never devoted particular attention to its history, I may venture to repeat that all commendation rightfully belongs to you.

Nor would I forget that my thanks are also due to William A. Wellman, esq., your principal deputy collector, who, at our second interview, generously relinquished his own favorite plan of writing a report upon our cod and mackerel fisheries, and expressed a decided wish that the duty should be transferred to me, as well as his readiness to afford me all possible aid. His knowledge and experience have been of material assistance. I am indebted to him for important facts which were to be obtained of no other person, for information which has corrected my views and opinions in several particulars, and for statistical matter of great value.

I have the honor to be, sir, your obedient servant,

LORENZO SABINE.

PHILIP GREELY, Jr., Esq.,

*Collector of the Customs port of Boston and Charlestown*

## PART I.—FRANCE, SPAIN, PORTUGAL.

### COD-FISHERY OF FRANCE.

The French were the first European cod-fishers in the American seas. There is a tradition among the fishermen of Biscay that their countrymen visited Newfoundland before the time of Columbus. It is said, indeed, that the great discoverer was informed of the fact by a pilot who had been engaged in the enterprises. The story, improbable as it is, seems to have been treated with respect by some writers of the sixteenth century, but may be dismissed now as one which rests upon no clear and authentic testimony.

But that the Newfoundland fisheries were known to the Biscayans and Normans as early as the year 1504, is quite certain. When Cabot discovered our continent, Europe, including England, was Catholic; and during the fasts of the church, the pickled herring of Holland was the principal food. The consumption of fish was immense;\* and the Dutch, having enjoyed the monopoly of the supply, had become immensely rich. The knowledge communicated by Cabot and the voyagers who followed him, that the waters of America contained, not only an abundance, but many varieties of fish, gave rise to an excitement on the subject of fishing hardly less intense than is witnessed at the present time relative to mining. Persons of the highest rank, and

\* Documents which show the immense consumption of fish are to be met with by the students of history everywhere. The following incidents, selected from a number, will sufficiently illustrate the statement in the text:

"The bill of fare of the feast given on the marriage of Henry IV to his Queen Joan, of Navarre, at Winchester, in 1403, 'is yet in existence, written on parchment,' remarks a chronicler of curious things of 'the olden time;' and the banquet consisted of six courses—three of flesh and fowl, and *three of fish*. In the 'first course of *Fyshe*,' were '*Salty fyshe*,' and '*Breme samoun rostyd*.' 'Of the comforts of the *poor*,' 16th century, says an English journal, 'we may form a tolerably correct notion from the *luxuries* registered in the household book of the great Earl of Northumberland.' From this document it appears that, in one of the most noble and splendid establishments of

not engaged in commercial pursuits, become shareholders in adventures to the new fishing-grounds. And though the Dutch refused to abandon the particular fishery by which they had obtained both wealth and celebrity, vessels wearing the flags of France, England, Spain, and Portugal came annually in search of the cod—as we shall see—for nearly a century before a single European colony was founded in America north of the ancient limits of the United States.

Of the incidents of the French fishing voyage of 1504 I have not been able to find any account; but there is mention, four years later, of Thomas Aubert, who came from Dieppe to Newfoundland, and who, previous to his return, explored the river St. Lawrence. We learn, further, that the fishery increased rapidly, and that, in 1517, quite fifty ships of different nations were employed in it.

The flag of France was probably the most numerous, since, in 1527, an English captain at Newfoundland wrote to his sovereign, Henry VIII, that in the harbor of St. John alone he found fishing eleven sail of Norman and one Breton. Francis I, at this period, was engrossed by a passionate and unsuccessful rivalry with Charles V of Spain, and could hardly attend to so humble an interest. "But Chabot, admiral of France, acquainted by his office with the fishermen, on whose vessels he levied some small exactions for his private emolument, interested Francis in the design of exploring and colonizing the new world." Jacques Cartier,\* of St. Malo, who was considered the best seaman of his day, was accordingly intrusted with the command of an expedition in 1534.

The French appear to have had establishments on shore, for the purposes of the fishery, in 1540; but we have no certain information with regard to them. In 1577 they employed no less than one hundred and fifty vessels, and prosecuted the business with great vigor and success. After the accession of Henry IV—the first of the Bourbons—and under the auspices of his illustrious minister, Sully, the Newfoundland cod-fishery was placed under the protection of the government.

Previous to 1609, so constant and regular was intercourse with our fishing-grounds that Scavalet, an old fisherman, had made forty voyages.

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the kingdom, the retainers and servants had but spare and unwholesome diet—salt beef, mutton, and fish *three-fourths* of the year, with little or no vegetables; so that, as Hume says, 'there cannot be anything more erroneous than the magnificent ideas formed of the *roast beef of old England*.' Nor does it seem that 'my lord and lady' themselves fared much better than their 'retainers,' since for their breakfast they had 'a quart of beer, as much wine, *two pieces of salt fish, six red herrings, four white ones, and a dish of sprats*.' In England, in the same century, 'the first dish brought to table on Easter day was a *red herring* riding away on horseback; that is, it was the cook's duty to set this fish 'in corn sallad,' and make it look like a man riding on a horse."

\* Jacques Cartier was a native of St. Malo. Francis I sent him on his first voyage in 1534. He made a second voyage in 1535; and, when ready to depart from France, he went to the cathedral, with his whole company, to receive the bishop's benediction. Many of his companions were young men of distinction. He came to the French possessions in America a third time in 1540, as pilot, and in command of five ships, under Francois de la Roque, lord of Roberval, who, commissioned as governor of Canada, was intrusted with the supreme authority. Cartier published an account of Canada after his second voyage.



Without statistics in the early part of the seventeenth century, we only know, generally, that there was a material decline in this distant branch of industry, caused, possibly, by the civil commotions at home. But in the year 1645, though the number of vessels employed was fifty less than in 1577, the fishermen of France were deemed by English writers to be formidable rivals of their own. Disputes and bloodshed had then occurred—precursors of long and distressing wars for the mastery of the fishing-grounds.

Meantime the successes, the explorations, and the representations of the hardy adventurers to our waters for an article of food for the fast-days of the church had led to the most important political results. The limits of this report do not permit minute statements; and I will only remark that, when Cartier—already referred to—made his first voyage, the design of the French monarch was merely to found a single colony in the neighborhood of the fishing-banks, but that the information of the country communicated to Francis on the navigator's return, confirming as it did the descriptions of the fishermen of Normandy and Brittany, induced a more extended plan, and the possession, for permanent colonization, of the vast region from which, after the voyages and discoveries of Pontgrave, of Champlain, and others, were formed the colonies of Canada and Nova Scotia, and, in due time, Cape Breton. Thus it is historically true that France was directly indebted to her fisheries for her possessions in America.

The right to these possessions was soon disputed. In an age when kings claimed, each for himself, all the lands and seas that his subjects saw or sailed over, and when charters and grants were framed in perfect ignorance of the domains which they transferred, almost in levity, to favorites, it could not but sometimes happen that the subjects of different crowns received patents of precisely the same tracts of country, and that, on lines where French and English grants met, the boundaries were so vaguely and uncertainly described as to produce long and bitter contentions.

Such, indeed, was the case to an extent to disturb the peace of the colonists of America for more than a century. As most of the controversies from this source are connected with our subject, a notice of them is indispensable.

The first difficulties occurred in the country known for a long time as "Acadia," which may be described, generally, as embracing the whole of the present colonies of Nova Scotia and New Brunswick, and Maine between the Kennebec and the St. Croix rivers. It is sufficiently definite for our purpose to say that this immense territory was claimed by both crowns, and that the subjects of both—the one resting on the English grant to Sir William Alexander, and the other on the French patent to De Monts—settled upon it, and fished in its seas, as inclination led them.

The treaty of St. Germain, in 1632, hushed for a while the earlier disputes, since Charles I, who had married a French princess, resigned by that instrument all the places in Canada, Nova Scotia, and Cape Breton occupied by persons who owed allegiance to him; yet, as the English people condemned the cession, and as neither lines nor limits were defined, new contentions arose, which, as we shall see,

were terminated only with the extinction of French power in this hemisphere. In fact, historians of acknowledged authority consider the treaty of St. Germain as among the prominent causes of the American Revolution, inasmuch as the disputes to which it gave rise disturbed, finally, the relations between England and her thirteen colonies.

Twenty-two years elapsed, and Cromwell, in a time of profound peace with France, took forcible possession of Nova Scotia, claiming that its cession by Charles was fraudulent. He erected it into a colony, and organized a government. It was considered highly valuable, and Englishmen of rank aspired to become its proprietary lords from the moment of its acquisition.

The French court remonstrated, without changing the purpose of the protector. But, after the restoration of the Stuarts, and by the treaty of Breda, in 1667, this colony passed a second time to France.\* Though St. John, Port Royal, La Heve, Cape Sable, as well as Penta-gaet or Penobscot, were specially named in the cession, the general boundaries were not mentioned, and the soil and the fishing-grounds were again the scenes of collisions, reprisals, and fierce quarrels. A third treaty—that of London—in 1686, confirmed the two powers in the possession of the American colonies respectively held at the commencement of hostilities, but left the extent and limits of all as unsettled as before.

Sagacious men in New England had now seen for years that the expulsion of the French was the only measure that would secure peace in the prosecution of the fisheries, and they endeavored to enlist the sympathy and co-operation of the mother country. The war between France and England which followed the accession of William and Mary was no sooner proclaimed at Boston than the general court of Massachusetts commenced preparations for the conquest of Nova Scotia and Canada. Sir William Phips, who was born and bred among the fishermen of Maine, was intrusted with the command of an expedition against both. He reduced the first, and established a government; but his enterprise in the St. Lawrence was disastrous. It is of interest to add, that the first paper money emitted in America was issued by Massachusetts to defray the expenses of these military operations.

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\* Edward Randolph, the first collector of the customs of Boston, in a Narrative to the Lords of Trade and Plantations, in 1676, says that "The French, upon the last treaty of peace concluded between the two crowns of England and France, had Nova Scotia, now called Acadie, delivered up to them, to the great discontent and murmuring of the government of Boston, that his Majestie, without their knowledge or consent, should part with a place so profitable to them, from whence they drew great quantities of beaver and other peltry, besides the fishing for cod. Nevertheless," he adds, "the people of Boston have continued a private trade with the French and Indians inhabiting those parts for beaver skins and other commodities, and have openly kept on their fishing upon the said coasts."

He says further, that "Monsieur La Bourn, governor for the French king there, upon pretence of some affronts and injuries offered him by the government of Boston, did strictly inhibit the inhabitants any trade with the English, and moreover layd in imposition of four hundred codfish upon every vessel that should fish upon the coasts, and such as refused had their fish and provisions seized on and taken away." By the "Boston government," Randolph means the government of Massachusetts.



At the peace of Ryswick, in 1697, it was stipulated that mutual restitution should be made of all conquests during the war; and, much to the dissatisfaction of the English colonists, Nova Scotia returned once more to the undisputed possession of the French. The strife in America had been avowedly for the fisheries, and for territory north and west; and this treaty, which, with the exception of the eastern half of Newfoundland, secured to France the whole coasts, the islands, and the fishing-grounds from Maine to beyond Labrador and Hudson's Bay, besides Canada and the valley of the Mississippi, was regarded as dishonorable to England and wantonly injurious to colonial industry and peace.

The evil consequences of the treaty of Ryswick were soon manifest. A year had not elapsed before the French government promulgated a claim to the sole ownership of the fisheries. In 1698, a frigate bound from France to Nova Scotia furnished the master of a Massachusetts vessel with a translated order from the king, which authorized the seizure of all vessels not of the French flag that should be found fishing on the coast. General publicity of the order followed, and its execution was rigidly enforced. Bonaventure, in the ship-of-war *Enviux*, boarded and sent home every English colonial vessel that appeared on his cruising-ground; while Villabon, governor of Nova Scotia, in an official despatch to the executive of Massachusetts, declared that instructions from his royal master demanded of him the seizure of every American fisherman that ventured *east of the Kennebeck river, in Maine*. The claim was monstrous. If I understand its extent, the only fisheries which were to be open and free to vessels of the English flag were those westerly from the Kennebeck to Cape Cod, and those of the western half of Newfoundland. It seems never to have occurred to a single French statesman that the supply of fish in our seas is inexhaustible, and that, reserving certain and sufficient coasts for the exclusive use of their own people, other coasts might have been secured to their rivals, without injury to any, and with advantage to all. In fact, evidence that such a plan was suggested by our fathers, or by the ministry "at home," does not, I think, exist. On both sides the strife was for the monopoly and for the mastery.

Richard, Earl Bellamont, arrived in Boston in 1699,\* and, having assumed the administration of affairs in Massachusetts, pointedly referred to these pretensions in a speech to the general court, and to the execrable treachery of the Stuart who had parted last with Nova Scotia and "the noble fishery on its coast." But his lordship could afford no redress.

In the first year of the reign of Queen Anne, the two nations were again involved in war. Among its causes was the claim of France to a part of Maine and to the whole of the fishing-grounds. The people of New England, driven from the Acadian seas by the common enemy, needed no solicitation from the mother country to engage heartily in

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\* It was a new thing to see a nobleman at the head of the government of Massachusetts, and he was received with the greatest respect. "Twenty companies of soldiers and a vast concourse of people met his lordship and the countess, and there was fire-work and good drink all night." He died in New York in 1701. He was an enemy of the Stuarts.

the contest. On the other hand, employing armed vessels of their own, they were hardly restrained, in their zeal and success, from hanging as common pirates some of the French officers who had been the instruments of interrupting their pursuits in the forbidden waters.

Nor was this all. They attempted the conquest of Nova Scotia, and equipped a fleet at Boston. The enterprise failed. Promised ships from England three years later, but disappointed, a second expedition failed also.

At last, in 1710, Nova Scotia became an English colony. Its reduction was a duty assumed by the ministry, while, in truth, it was accomplished principally by colonists and colonial resources. Of the force assembled at Boston, six ships and a corps of marines were, indeed, sent from England; but the remainder, thirty vessels and four regiments, were furnished by the four northern colonies. Strange it was that Anne, the last of her family who occupied the throne, should have permanently annexed to the English crown the colony and the "noble fishery" which all of her line had sported with so freely and so disastrously.

I have barely glanced at events which occupy hundreds of pages of documentary and written history. Whoever has examined the transactions thus briefly noticed has ceased to wonder that the Stuarts were so odious in New England. I know of nothing more disgraceful to them, either as rulers or as private gentlemen, than their dealings with Sir William Alexander, their own original grantee of Nova Scotia, with the claimants under him, and with their subjects in America, who bled, reign after reign, and throughout *their* reigns, to rid themselves of the calamities entailed upon them by the treaty of St. Germain's, and who, in the adjustment of European questions, were defrauded of the fruits of their exertions and sacrifices by the stipulations in the treaties of Breda of London, and Ryswick.

The conquest of one French colony achieved, the ministry, yielding to importunities from America, projected an enterprise for the reduction of Canada also—in which, as usual, the colonists were to bear a large share of the actual burdens. After unnecessary, even inexcusable, delays on the part of those intrusted with the management of the affair in England, a fleet and a land force finally departed from Boston for the St. Lawrence. A more miserable termination to a military operation of moment can hardly be found in history. "The whole design," wrote the celebrated Lord Bolingbroke, "was formed by me;" and he added, "I have a sort of paternal concern for the success of it." But how could he have thought "success" possible?

The general appointed to command the troops was known among his bottle-companions as "*honest Jack Hill*," and was pronounced by the Duke of Marlborough to be "good for nothing." The admiral was so ignorant—so inefficient generally—as to imagine that "the ice in the river at Quebec, freezing to the bottom, would bilge his vessels," and that, to avert so fearful a disaster to her Majesty's ships, he "must place them on dry ground, in frames and cradles, till the thaw!"

He was spared the calamity of wintering in ice one hundred feet in thickness! On the passage up the St. Lawrence, eight of his ships were wrecked, and eight hundred and eighty-four men drowned. But for this, said he, "ten or twelve thousand men must have been left to



perish of cold and hunger: by the loss of a part, Providence saved all the rest." Of course, an expedition consisting of fifteen ships-of-war and forty transports, of troops fresh from the victories of Marlborough, and of colonists trained to the severities of a northern climate, and sufficient for the service, under *such* chiefs, accomplished nothing but a hasty departure.

Peace was concluded in 1713. Down to this period the French fisheries had been more successful, probably, than those conducted by the English or the American colonists.

Their own account is, indeed, that, at the opening of the century, their catch of codfish was equal to the supply of all continental or Catholic Europe. By the treaty of Utrecht, in the year just mentioned, England obtained what she had so long contended for, as her statesmen imagined—namely, a supremacy in, or monopoly of, the fisheries of our seas.

On the coast of Nova Scotia, or Acadia, the French were utterly prohibited from approaching within thirty leagues, beginning at the Isle of Sable, and thence measuring southwesterly; while the unconditional right of England to the whole of Newfoundland, and to the Bay of Hudson and its borders, was formally acknowledged.

Yet, at Newfoundland, the privilege of fishing on a part of the eastern coast from Cape Bonavista to the northern point, and thence along the western shore as far as Point Riche, was granted to the subjects of Louis. It is to be observed that England reserved the exclusive use of the fishing-grounds considered the best, and also the territorial jurisdiction; that the French were not permitted to settle on the soil, or erect any structures other than fishermen's huts and stages; and that the old and well-understood method of fishing was to be continued without change.

By one party this adjustment of a vexed question was deemed favorable to England and just to France. But another party insisted that their rival, humbled by the terms of the peace in other respects, should have been required in this to submit to her own doctrines and to an unconditional exclusion from the American seas. The opponents of the treaty did not view the case fairly. The cession of Acadia was supposed to include the large island of Cape Breton; and, this admitted, the French were to be confined to a region from which their further, or at least considerable, interference with vessels wearing the English flag was hardly possible: while, with regard to that very region, it should be recollected that, though England claimed Newfoundland by the discovery of Cabot and the possession of Gilbert, no strenuous or long-continued opposition had been made, at any time, to all nations fishing, or even forming settlements, there; and that France was entitled to special consideration, inasmuch as her establishments for conducting the fishery had been held without interruption for more than half a century, and had been recognised at the peace of Ryswick. Besides, she had captured several English posts in addition, and, in fact, was in actual possession of a large part of the island and its valuable appendages.

The party in opposition assailed the ministry in terms of bitter denunciation. It was said that they "had been grossly imposed upon," that they "had directly given to France all she wanted," and

that the concessions were "universally and justly condemned." Such are some of the words of reproach that appear in an official report. In the political ferocity of the time, Lord Oxford was impeached; and it is among the charges against him that, "in defiance of an express act of Parliament, as well as in contempt of the frequent and earnest representations of the merchants of Great Britain and of the commissioners of trade and plantations," he, Robert, Earl of Oxford, and Earl Mortimer,\* had advised his sovereign that "the subjects of France should have the liberty of fishing and drying fish in Newfoundland."

His lordship was committed to the Tower, and tried for high treason; but such has been the advance of civilization and of the doctrine of human brotherhood, that an act which was a flagrant crime in his own age has become one honorable to his memory. The great principle he thus maintained in disgrace, that the seas of British America are not to be held by British subjects as a monopoly, and to the exclusion of all other people, has never since been wholly disregarded by any British minister, and we may hope will ever now appear in British diplomacy to mark the progress of liberal principles and of "man's humanity to man."

The loss of Nova Scotia caused but a temporary interruption of the French fisheries. Within a year of the ratification of the treaty of Utrecht, fugitive fishermen of that colony and of Newfoundland settled on Cape Breton and resumed their business. I have remarked that, as the English understood the cession of Acadia, "according to its ancient boundaries," this island was held to be a part of it. The French contended, on the other hand, that Acadia was a *continental* possession, and did not embrace, of course, an island sufficient of itself to form a colony. The settlement and fortification of Cape Breton was therefore undertaken immediately, as a government measure. Never has there been a better illustration of the facile character of the French people than is afforded by the case before us. Wasting no energies in useless regrets, but adapting themselves to the circumstances of their position, they recovered from their losses with ease and rapidity. In 1721 their fleet of fishing-vessels was larger than at any former period, and is said to have been quite four hundred.

Reference to the map will show that Cape Breton and Nova Scotia are divided by a narrow strait. The meeting of vessels of the two flags was unavoidable. The revival of old grudges, collisions, and quarrels, was certain; but no serious difficulties appear to have occurred previous to 1734.

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\* Robert Harley, Earl of Oxford, and Earl Mortimer, a distinguished minister of state in the reign of Queen Anne, was born in 1661. "After the peace of Utrecht, the tory statesmen, having no longer apprehensions of danger from abroad, began to quarrel among themselves and the two chiefs, Oxford and Bolingbroke, especially, became personal and political foes." Soon after the succession of George I, Oxford was impeached of high treason by the House of Commons, and was committed to the Tower. The Duke of Marlborough was among his enemies. Bolingbroke fled to the continent. Oxford was tried before the House of Peers in 1717, and acquitted of the crimes alleged against him. He was the friend of Pope, Swift, and other literary men of the time. He died in 1724. His son Edward, the second Earl of Oxford, and Earl Mortimer, was also a great and liberal patron of literature and learned men, and completed the valuable collection of manuscripts which he commenced, and which is now in the British Museum.



In 1744, England and France were still again involved in war. Among the earliest hostile deeds were the surprise of the English garrison at Canseau, Nova Scotia, and the destruction of the buildings, the fort, and the fishery there, by a force from Cape Breton, and the capture at Newfoundland of a French ship, laden with one hundred and fifty tons of dried codfish, by a privateer belonging to Boston. These, however, are incidents of no moment, and may be disposed of in a word.

The French fisheries had continued prosperous. They excited envy and alarm. Accounts which are considered authentic, but which I am compelled to regard as somewhat exaggerated, show that they employed nearly six hundred vessels and upwards of twenty-seven thousand men; and that the annual produce was almost a million and a half quintals of fish, of the value of more than four and a half millions of dollars. More than all else, the fishery at Cape Breton was held to be in violation of the treaty of Utrecht; for, as has been said, that island was in the never-yet-defined country, Acadia.

Robert Auchmuty,\* an eminent lawyer of Boston, and judge of the court of admiralty, when sent to England as agent of Massachusetts on the question of the Rhode Island boundary, published a pamphlet entitled "The importance of Cape Breton to the British nation, and a plan for taking the place," in which he demonstrated that its conquest would put the English in sole possession of the fisheries of North America; would give the colonies ability to purchase manufactures of the mother country of the value of ten millions of dollars annually; would employ many thousand families then earning nothing; increase English mariners and shipping; cut off all communication between France and Canada by the river St. Lawrence, so that, in the fall of Quebec, the French would be driven from the continent; and, finally, open a correspondence with the remote Indian tribes, and transfer the fur trade to Anglo-Saxon hands. All this was to follow the reduction and possession of a cold, distant, and inhospitable island. Such was the sentiment of the time.

In 1745, the conquest of Cape Breton was undertaken. Viewed as a military enterprise, its capture is the most remarkable event in our colonial history. Several colonies south of New England were invited to join the expedition, but none would consent to waste life in a project so mad; and Franklin, forgetting that he was "Boston-born," ridiculed it in one of the wittiest letters he ever wrote. In Massachusetts, and elsewhere at the North, men enlisted as in a crusade. Whitefield made a recruiting house of the sanctuary. To show how the images in the Catholic churches were to be hewn down, axes were branded and borne about; and, while Puritanism aimed to strike a blow at

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\*Robert Auchmuty was of Scottish descent, but was educated at Dublin. He came to Boston when young, and was appointed judge of the court of admiralty in 1703. In 1740, he was a director of the "Land Bank," or bubble, which involved the father of Samuel Adams and many others in ruin. He was sent to England on important service, and, while there, projected an expedition to Cape Breton. After his return, he was appointed judge of admiralty a second time. He died in 1750. His son, Samuel, a graduate of Harvard University, was an Episcopal minister in New York; and his grandson, Sir Samuel Auchmuty, a lieutenant general in the British Army, and died in 1822. The Auchmutys of the revolutionary era adhered to the side of the crown.

Catholicism, the concerns of the present life were not forgotten. Fishermen panted for revenge on those who had insulted them and driven them from the fishing-grounds. Merchants, with Auchmuty's pamphlet in their hands, thought of the increased sale and the enhanced price of New England fish in foreign markets. Military officers who had served in Nova Scotia in the previous war were ambitious of further distinction and preferment. Such were the motives.

William Vaughan, who was extensively engaged in the fisheries, and whose home was near Pemaquid, in Maine, claimed that, while listening to the tales of some of his own fishermen, he conceived the design of the expedition. Governor Shirley,\* of Massachusetts, embraced his plans, and submitted them to the general court. By this body they were rejected. Renewed by the governor, and insisted upon by the merchants, they were finally adopted by the vote of the speaker, who had acted previously in opposition.†

Instantly Boston became the scene of busy preparation.

William Pepperell, of Kittery, in Maine, and the son of a fisherman of the Isles of Shoals, assumed command of the expedition. The merchants of Boston furnished a large part of the armed vessels and transports. The fishermen of Plymouth were the first troops to arrive. Those of Marblehead and Gloucester, and those who had been employed by Pepperell and Vaughan, followed in rapid succession. Lumberers, mechanics, and husbandmen completed the force.

Louisbourg was the point of attack; for Cape Breton would fall with its capital without another blow. This city was named in honor of the king. Twenty-five years and thirty millions of livres were required to complete it. Its walls were built of bricks brought from France. More than two hundred pieces of cannon were mounted to defend it. So great was its strength that it was called the "Dunkirk of America." It had nunneries and palaces, terraces and gardens. That such a city rose upon a lone, desolate isle, in the infancy of American colonization, appears incredible. Explanation is alone found in the fishing enthusiasm of the period.

The fleet sailed from Boston in March. Singular to remark, of a military order, Shirley's instructions required an ample supply of cod-lines for use on the passage, so that the troops might be fed, as much as possible, on the products of the sea.

A more undisciplined and disorderly body of men never disembarked to attempt the reduction of a walled city. The squadron commanded by Warren, and ordered by the ministry to co-operate with Pepperell, arrived in time to share in the perils and honors of the siege. The colonial fleet and the ships of the royal navy kept up a close blockade. The colonists on shore, without a regular encampment, lodged in huts built of turf and bushes. With straps across their shoulders, they dragged cannon in sledges over morasses impassable with wheels. Making jest of military subordination, they fired at marks, they fished and fowled, wrestled and raced, and chased after

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\* William Shirley, Governor of Massachusetts, was a native of England, and was bred to the law. He came to Boston about the year 1733, and was appointed governor in 1741. In 1755, he was commander-in-chief of the British forces in America. He died in Roxbury, Massachusetts, in 1771.

† Mr. Oliver, a Boston member, broke his leg on his way to the house, and was not present. His vote would have caused the rejection of the plan a second time. The members deliberated under the first oath of secrecy administered to a legislative assembly in America.



balls shot from the French guns. Badly sheltered, and exhausted by toil in mud and water, and by exposure in a cold and foggy climate, fifteen hundred became sick and unfit for duty. Still the siege was conducted with surpassing energy, with some skill, and courage seldom equalled. Nine thousand cannon-balls and six hundred bombs were discharged by the assailants. The French commander submitted on the forty-ninth day of the investment. The victors entered the "Dunkirk of the western world" amazed at their own achievement.

A single day's delay in the surrender might have resulted in discomfiture and defeat, and in extensive mortal sickness, since, within a few hours of the capitulation, a storm of rain set in, which, in the ten days it continued, flooded the camp-ground and beat down the huts which the colonists abandoned for quarters within the walls.

Pepperell and his companions were the most fortunate of men. Even after the fall of the city, the French flag (which was kept flying as a decoy) lured within their grasp ships with cargoes of merchandise worth more than a million of dollars. The exploit was commended in the highest and loftiest terms. Even thirty years afterwards, Mr. Hartley\* said, in the House of Commons, that the colonists "took Louisbourg from the French single-handed, without any European assistance—as mettled an enterprise as any in our history—an everlasting memorial to the zeal, courage, and perseverance of the troops of New England."†

These are the mere outlines of the accounts of this extraordinary affair.‡ Several of our books of history contain full details; but the correspondence of Shirley, Pepperell, and Warren, which is preserved in the Collections of the Historical Society of Massachusetts, as well as the letters and narratives of subordinate actors, should be read in connexion.

A century has elapsed. With the present condition of Cape Breton in view, we almost imagine that we hold in our hands books of fiction rather than the records of the real, when we read, as we do in Smollet, that the conquest of Louisbourg was "*the most important achievement of the war of 1744;*" in the Universal History, that "*New England*

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\* He was one of the British commissioners of peace in 1783.

† Horace Walpole calls Sir Peter Warren "the conqueror of Cape Breton," and says that he was "richer than Anson, and absurd as Vernon." Walpole also quotes a remark of Marshal Belleisle, who, when he was told of the taking of Cape Breton, said, "he could believe *that*, because the ministry had no hand in it." Walpole adds: "We are making bonfires for Cape Breton, and thundering over Genoa, while our army in Flanders is running away and dropping to pieces by detachments taken prisoners every day."

‡ April 4, 1748, a committee of the House of Commons came to the following resolution: "*Resolved*, That it is the opinion of this committee that it is just and reasonable that the several provinces and colonies of Massachusetts Bay, New Hampshire, Connecticut, and Rhode Island be reimbursed the expenses they have been at in taking and securing to the crown of Great Britain the island of Cape Breton and its dependencies."

Mr. Burke remarks on this resolution that "these expenses were immense for such colonies; they were above £200,000 sterling—money first raised and advanced on their public credit."

William Bollan, collector of the customs for Salem and Marblehead, who married a daughter of Governor Shirley, was sent to England to solicit the reimbursement of these expenses. He obtained the sum of £183,649 sterling, after a difficult and toilsome agency of three years.

He returned to Boston in 1748, with six hundred and fifty-three thousand ounces of silver and ten tons of copper. This money was landed on Long Wharf, placed in wagons, and carried through the streets mid much rejoicing.

*gave peace to Europe by raising, arming, and transporting four thousand men,"* whose success *"proved an equivalent for all the successes of the French upon the continent;"* and in Lord Chesterfield, that, "in the end it produced peace," and that the noble duke at the head of the admiralty declared that, *"if France was master of Portsmouth, he would hang the men who should give Cape Breton in exchange."*

The peace of Aix la Chapelle, in 1748, was dishonorable to England at home and in her colonies. Of the adjustment of the questions which relate to our subject, I may remark, that she not only restored Cape Breton to France, and submitted to the humiliating condition of sending two persons of rank and distinction to reside in that kingdom as hostages until that island and other conquests should be actually surrendered, but consented also to omit all mention of the right of English subjects to navigate the American seas without being liable to search and molestation, though that pretension on the part of the French was one of the original causes of the war, as well as the basis of the attacks made on Walpole's ministry. The results of the peace to England were an immense debt, the barren glory of supporting the German sovereignty of Maria Theresa, and the alienation of the affections of the people of New England, who saw evidence that the house of Hanover, like the Stuarts, were ready to sacrifice their victories and their interests as "equivalents" for defeats and disasters in Europe.

The fall of Louisbourg and the general hazards of war reduced the number of French vessels employed in the fisheries upwards of four hundred in a single year—to follow the received accounts; while, of the one hundred which still remained, nearly the whole, probably, made their fares at Newfoundland. This branch of industry was destined to a slow recovery of prosperity; for, in 1756, we record still another war between France and England.

Among the causes of hostilities on the part of the latter power, as announced in the royal declaration, were the aggressions of the French in Nova Scotia.\* In that region, and on other coasts frequented by fishermen, the war was attended with many distressing circumstances.† Without space for details, I can only give a single example at Newfoundland, where M. de Tournay, in command of a French force of four ships-of-the-line, a bomb-ketch, and a body of troops, landed at the Bay of Bulls, destroyed the English settlements of Trinity and Carbonear, captured several vessels, destroyed the stages and implements of fishery of the inhabitants, and, appearing off St. John, the capital of the island, demanded and obtained its surrender.

Omitting notice of minor events, we come, in 1759, to the second siege of Louisbourg. The force employed was immense, consisting of twenty ships-of-the-line, eighteen frigates, a large fleet of smaller vessels, and an army of fourteen thousand men. The success of this ex-

\* Mr. Huskisson, in a speech in Parliament in 1826, said: "Sir, the war which began in the year 1756, commonly called the Seven Years' War, was, *strictly speaking, so far as relates to this country and to the Bourbon governments of France and Spain, a war for colonial privileges, colonial claims, and colonial ascendancy.* In the course of that war, British skill and British valor placed in the hands of this country Quebec and the Havana. By the capture of these fortresses, Great Britain became mistress of the colonial destinies of the western world."

† The first conquests of British arms in America in the French war were the French fort of Beau Séjour, in the Bay of Fundy, and two other posts in the same region. Colonel Monckton, the conqueror, gave the name of Fort Cumberland to Beau Séjour.



pedition caused great rejoicings throughout the British empire. The French colors were deposited in St. Paul's, London, and a form of thanksgiving was ordered to be used in all the churches; while in New England, prayers and thanksgivings were solemnly offered on the domestic altar and in public worship.

General Wolfe commanded a detached body of two thousand troops, and was highly distinguished.\* He sailed from Louisbourg the following year, at the head of eight thousand men, to "die satisfied" on the Plains of Abraham. Well might he utter these words! He was the victor in one of the decisive battles of the world! In the hour that the British troops entered Quebec, the rule of America passed from the Gallic to the Anglo-Saxon race. Between the death of a Jesuit father and the breaking up of a French settlement in Maine, and the treaty of Paris, was just a century and a half. We have seen how large a part of the period was devoted to war. The contest was at an end. The Gaul resigned the mastery of the New World to the Briton.†

In view of the PAST and the FUTURE, our fathers were "SATISFIED."

It remains to give a summary of the exertions of the northern colonists to achieve the conquest of Canada. So numerous were the seamen and fishermen of New England on board of the ships-of-war, that her merchants were compelled to navigate their own vessels with In-

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\* "Wolfe," says Horace Walpole, "who was no friend of Mr. Conway last year, and for whom I consequently have no affection, has great merit, spirit, and alacrity, and shone extremely at Louisbourg."

† It may be said that Great Britain has hardly had a moment's quiet with Canada since the day when Wolfe rose from a sick bed to "die happy" in planting her flag on the walls of Quebec. We cannot stop to trace the reasons for this state of things, but must confine our remarks to the course of events immediately following the conquest. After the fall of Quebec and the reduction of the entire country, but before the final cession, there arose an exciting controversy among some of the leading statesmen of the time, whether Canada should be retained or restored to France, and the island of Guadeloupe be added to the British dominions in its stead. There seems to have been a prevalent fear that, if Canada were kept, the colonies, rid of all apprehensions from the French, would increase at an alarming rate, and finally throw off their dependence on the mother country. A tract was published in support of this view, supposed to have been written either by Edmund or William Burke, to which Franklin replied in his happiest and ablest manner. Franklin's answer, in the judgment of Mr. Sparks, "was believed to have had great weight in the ministerial councils, and to have been mainly instrumental in causing Canada to be held at the peace."

In the course of the dispute, the charge was openly made that the treaty of peace which restored to France the conquests of Bellisle, Goree, Guadeloupe, St. Lucia, Martinique, and Havana, which guarantied to her people the use of the Newfoundland fishery, and which retained an acquisition of so doubtful value as Canada, was the result of corrupt bargaining.

Lord St. Vincent (a great naval captain, and hardly inferior to Nelson) was of the opinion, even in 1783, that Canada ought not to be retained by England. Lord Brougham, in his historical sketches, relates that, "when Lord Shelburne's peace (1783) was signed, and before the terms were made public, he sent for the admiral, and, showing them, asked his opinion. 'I like them very well,' said he, 'but there is a great omission.' 'In what?' 'In leaving Canada as a British province.' 'How could we possibly give it up?' inquired Lord Shelburne. 'How can you hope to keep it?' replied the veteran warrior: 'with an English republic just established in the sight of Canada, and with a population of a handful of English settled among a body of hereditary Frenchmen, it is impossible; and, rely on it, you only retain a running sore, the source of endless disquiet and expense.' 'Would the country bear it? have you forgotten Wolfe and Quebec?' asked his lordship. 'No: it is because I remember both. I served with Wolfe at Quebec. Having lived so long, I have had full time for reflection on this matter; and my clear opinion is, that if this fair occasion for giving up Canada is neglected, nothing but difficulty, in either keeping or resigning it, will ever after be known.'" This remarkable prediction has been fulfilled, as every one who is familiar with Canadian affairs will admit.

dians and negroes. More than four hundred privateers were fitted out during the contest to ravage the French West Indies and distress the commerce of France in all parts of the world; and it was asserted in the House of Commons, without contradiction, that, of the seamen employed in the British navy, ten thousand were natives of America. For the attack on Louisbourg and Quebec alone, the number furnished by the single colony of Massachusetts was five hundred, besides the fishermen who were impressed.\* A single example of the pecuniary burdens of those who personally bore no part in hostile deeds will suffice. A Boston gentleman of fortune sent one of his tax-bills to a friend in London for his opinion, and received for answer that "he did not believe there was a man in all England who paid so much, in proportion, for the support of government." I find it stated that the amount assessed, in taxes of every kind, was nearly half of the payer's income.

In this rapid notice of the events which preceded and led to the extinction of French power, I have not exaggerated the importance attached to the fisheries. Few of the far-sighted saw, even in the distant future, as we really see, in New France, and that half-fabulous country, Acadia, the building of ships to preserve and increase the maritime strength of England, wheat-lands to rival our own, the great lakes united with the ocean, and upon the St. Lawrence and St. John some of the principal timber-marts of the world. Nay, among the wisest, the Indian was forever to glide in his canoe on the waters—forever to roam the dark, limitless forest. In a word, the vision of most was bounded by the fur trade on the soil, and by the fish trade on the sea.

A single remark upon the influence of these events in producing the Revolution, limited as is the plan of this report, cannot be omitted. In the "paper stuff" emitted by Massachusetts to pay off "Phips's men," we see the germ of the "continental money." In the levying of taxes, in the raising of troops, and the general independence of the colonial assemblies during periods of war, we find explanation of the wonderful ease of the transition of these bodies into "provincial congresses." In the many armies embodied and fleets fitted at Boston, we learn why the people, familiar with military men and measures, almost recklessly provoked collision with the troops sent by their own sovereign to overawe and subdue them.

In truth, the prominent actors in the wars of 1744 and of 1756 were the prominent actors in the struggle of freedom. Thus, with Pepperell at the siege of Louisbourg were Thornton, who became a signer of the Declaration of Independence; Bradford, who commanded a continental regiment; and Gridley, who laid out the works on Bunker's Hill. On the frontiers of Virginia and in the west, in the last-mentioned war was the illustrious Washington. Engaged in one or both of the French wars were Lewis, Wolcott, Williams, and Livingston, who were signers of the Declaration of Independence; and Prescott, who commanded on the memorable 17th of June. Among those who

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\* "The Massachusetts forces," in 1759, says Hutchinson, "were of great service. Twenty-five hundred served in garrison at Louisbourg and Nova Scotia, in the room of the regular troops taken from thence to serve under General Wolfe. Several hundred served on board the king's ships as seamen, and the remainder of the six thousand five hundred men voted in the spring served under General Amherst. Besides this force, upon application of General Wolfe, three hundred more were raised and sent to Quebec by the lieutenant governor, in the absence of the governor at Penobscot."



became generals in the Revolution were Montgomery, who fell at Quebec; Gates, the victor at Saratoga; Mercer, who was slain at Princeton, and who, in the estimation of some, was second only to Washington; Morgan, the hero of the "Cowpens;" Thomas, who commanded in Canada after the fall of Montgomery; James Clinton, the father of De Witt Clinton; Stark, the victor at Bennington; Spencer, Israel and Rufus Putnam, Nixon, St. Clair, Gibson, Bull, Charles Lee, and Durke. There were also Butler, the second in command at Wyoming; and Campbell, a distinguished colonel; and Dyer, chief justice of Connecticut; Craik, director-general of the American hospital, and the "old and intimate friend" of Washington; Jones, the physician of Franklin; John Morgan, director-general and physician-general of the army; and Hynde, the medical adviser of Wolfe, who was with him when he fell, and accompanied Patrick Henry against Lord Dunmore.

It was in Nova Scotia and Canada, and on the Ohio, then—at Port Royal, Canseau, Louisbourg, Quebec, and in the wilds of Virginia—and in putting down French pretensions, that our fathers acquired the skill and experience necessary for the successful assertion of their own.

We pass to consider the terms of the treaty of 1763. In reply to the propositions of the court of London, the French ministry, at the commencement of the negotiations in 1761, consented to guaranty to England the possession of Canada, provided England would restore the island of Cape Breton, and confirm the right of French subjects to take and cure fish in the Gulf of St. Lawrence, as well as on the banks and in the island of Newfoundland. The fortifications of Louisbourg, the court of Versailles, however, suggested should be destroyed, and the harbor laid open for common use. These terms seem to have been the ultimatum of France.

In reply, the British ministry insisted upon the unconditional cession of Canada, with all its dependencies, and the cession of Cape Breton and all other islands in the Gulf of St. Lawrence. They replied, further, that the important privilege of fishing and curing cod on the coast of Newfoundland, as provided in the treaty of Utrecht, they had not designed to refuse, but merely to connect with stipulations relative to Dunkirk; and that the island of St. Peter would be ceded to France upon four indispensable conditions: first, that the island should not be fortified, or troops be stationed upon it, under any pretext whatever; second, that, denying the vessels of other nations all rights even of shelter, France should use the island and its harbor for her own fishermen alone; third, that the possession of the island should not be deemed to extend in any manner the stipulations of the treaty of Utrecht—that is to say, "*A loco Cap Bonavista non cupato usque ad extremitatem ejusdem insulæ septentrionalem, indique at latus occidentale recurrendo usque ad locum Pointe Riche appellatum*"—[From the place called Cape Bonavista to the northern extremity of the said island, and thence running westerly to the place denominated Point Riche;] fourth, that an English commissary should be allowed to reside at St. Peter, and the commander of the British ships-of-war on the Newfoundland station have liberty, from time to time, to visit the island, to see that these four conditions be duly observed.

With these propositions the French ministry were dissatisfied. They desired rights of fishing in the Gulf of St. Lawrence, while, with

regard to the cession of St. Peter, they remarked that it was so small and so near Placentia, that, as a shelter, it would prove altogether illusive, and serve to create disputes between the two nations, rather than facilitate the fishery of the French subjects; and they referred to the cession of Cape Breton, or of the island of St. John, as at first suggested, but expressed a willingness to accept of Canseau instead of either. Still, if the British ministry, for reasons unknown to them, could not agree to the cession of Canseau, then they submitted that Miquelon, an island, or, as they considered, a part of St. Peter, should be included in the cession of the last-named island, for the two joined together did not exceed three leagues in extent. They said also that they would maintain no military establishment at either of the places mentioned, except a guard of fifty men to support police regulations; and that, as much as possible with so weak a force, they would prevent all foreign vessels from sheltering, as required; while they would limit their fishery on the coast of Newfoundland to the stipulations of the treaty of Utrecht provided it should be understood that they could take and dry fish on the coast of St. Peter and Miquelon. To the condition relative to the residence of the commissary on the ceded islands they did not object.

In England opposition to any concessions to France was soon manifest. The fisheries in the Gulf of St. Lawrence and on the Banks of Newfoundland were held to constitute a great source of wealth to France, and to be her principal nursery for seamen. The voluntary offer of the ministry, therefore, to continue the privileges enjoyed under the treaty of Utrecht, was viewed with great displeasure. *The fisheries, it was said, were worth more than all Canada.* The common council of London, as representing the commercial interest of the kingdom, transmitted to the members of the House of Commons from the city peremptory instructions on the subject of the treaty, and particularly that the sole and exclusive right of fishing in the American seas should be reserved to the subjects of the British crown. Such, indeed, were the sentiments of a large party. But their remonstrances were disregarded.

The negotiations were concluded at Paris February 10, 1763. The articles of the treaty which relate to our subject are the following:

"The subjects of France shall have the liberty of fishing and drying on a part of the coasts of the island of Newfoundland, such as it is specified in the thirteenth article of the treaty of Utrecht, which article is renewed and confirmed by the present treaty, (except what relates to the island of Cape Breton, as well as the other islands and coasts in the mouth and in the Gulf of St. Lawrence.) And his Britannic Majesty consents to leave to the subjects of the Most Christian King the liberty of fishing in the Gulf of St. Lawrence, on condition that the subjects of France do not exercise the said fishery but at the distance of three leagues from all the coasts belonging to Great Britain, as well those of the continent as those of the islands situated in the said Gulf of St. Lawrence. And as to what relates to the fishery on the coasts of the island of Cape Breton, out of said gulf, the subjects of the Most Christian King shall not be permitted to exercise the said fishery but at the distance of fifteen leagues from the coasts of the island of Cape Breton; and the fishery on the coasts of Nova Scotia, or Acadia, and everywhere else out of the said gulf, shall remain on the footing of former treaties."



"The King of Great Britain cedes the islands of St. Pierre and Miquelon, in full right, to his Most Christian Majesty, to serve as shelter to the French fishermen; and his said Most Christian Majesty engages not to fortify the said islands, to erect no buildings upon them but merely for the convenience of the fishery, and to keep upon them a guard of fifty men only for the police."

These stipulations were severely attacked in Parliament and elsewhere. "Junius," in his celebrated letter to the Duke of Bedford, does not scruple to charge his grace with bribery. "Belleisle, Goree, Guadaloupe, St. Lucia, Martinique, the fishery, and the Havana," said he, "are glorious monuments of your grace's talents for negotiation. My lord, *we are too well acquainted with your pecuniary character to think it possible that so many public sacrifices should have been made without some private compensations. Your conduct carries with it an internal evidence beyond all the legal proofs of a court of justice.*"

Peace had hardly been concluded before the French were accused of violations of the treaty. In 1764, a sloop-of-war carried intelligence to England that they had a very formidable naval force at Newfoundland; that they intended to erect strong fortifications on St. Peter's; and that the English commodore on the station was without force sufficient to prevent the consummation of their plans. The party opposed to the ministry pronounced a war with France to be inevitable, unless the British government were disposed to surrender both Newfoundland and Canada. The alarm—which illustrates the spirit of the time, and the sensibility of the English people—proved to be without cause, since the French governor gave assurances that nothing had been or would be done contrary to the letter of the treaty; that he had but a single small cannon mounted, without a platform, designed merely to answer signals to their fishermen in foggy weather; that no buildings or works had been erected; and that his guard consisted of only forty-seven men. It appeared, however, that the French naval force was considerable, consisting of one ship of fifty guns, another of twenty-six guns, and others of smaller rates.

Remarking that the French employed at Newfoundland two hundred and fifty-nine vessels in 1768, and about the same number five years later, we come to the war of our own Revolution. To induce France to aid us in the struggle, our envoys were authorized, in 1776, to stipulate that all the trade between the United States and the French West Indies should be carried on either in French or American vessels: and they were specially instructed to assure his Most Christian Majesty, that if, by their joint efforts, the British should be excluded from any share in the cod-fisheries of America by the reduction of the islands of Newfoundland and Cape Breton, and ships-of-war should be furnished, at the expense of the United States, to reduce Nova Scotia, the fisheries should be enjoyed equally between them, to the exclusion of all other nations; and that one-half of Newfoundland should belong to France, and the other half, with Cape Breton and Nova Scotia, to the United States.

We may smile at—we can hardly commend—our fathers for claiming so large a share as this notable scheme devised; but the spirit which conceived and was prepared to execute so grand an enterprise, additional to the main purposes of their strife with the mother country, is to be placed in strong contrast with the indifference manifested now

about preserving our rights in the domains which they thus designed to conquer.

In 1778, the project was renewed. In the instructions to Franklin, he was directed to urge upon the French court the certainty of ruining the British fisheries on the Banks of Newfoundland, and consequently the British marine, by reducing Halifax and Quebec. Accompanying his instructions was a plan for capturing these places, in which the benefits of their acquisition to France and the United States were distinctly pointed out. They were of importance to France, it was said, because "the fishery of Newfoundland is justly considered the basis of a good marine;" and because "the possession of these two places necessarily secures to the party and their friends the island and fisheries." Among the benefits to the United States would be the acquisition of "two States to the Union," and the securing of the fisheries jointly with France, "to the total exclusion of Great Britain."

An alliance with France secured, a plan to reduce Canada at least was accordingly matured and adopted by Congress in the course of the last-mentioned year. It was the prevalent opinion in the United States that the French ministry not only approved of this measure, but that one of their objects in forming an alliance with us was to regain a part or the whole of the possessions in America which they had lost in previous wars, and thus regain their former position and influence in the western hemisphere. But the fact is now well ascertained that they were averse to the design against Canada, and that, from the first, it was their settled policy to leave that colony and Nova Scotia dependencies of England. Washington dissented from Congress, and presented that body with a long letter on the subject. He thought the plan both impracticable and unwise. Among his reasons for the latter opinion was, that France would engross "the whole trade of Newfoundland whenever she pleased," and thus secure "the finest nursery of seamen in the world." The expedition was never undertaken.

The treaty of commerce between France and the United States concluded in 1778, and annulled by act of Congress in the year 1800 contained the following provisions:

"ART. 9. The subjects, inhabitants, merchants, commanders of ships, masters, and mariners of the states, provinces, and dominions of each party, respectively, shall abstain and forbear to fish in all places possessed, or which shall be possessed, by the other party. The Most Christian King's subjects shall not fish in the havens, bays, creeks, roads, coasts, or places which the said United States hold, or shall hereafter hold; and in like manner the subjects, people, and inhabitants of the said United States shall not fish in the havens, bays, creeks, roads, coasts, or places which the Most Christian King possesses, or shall hereafter possess. And if any ship or vessel shall be found fishing contrary to the tenor of this treaty, the said ship or vessel, with its lading, proof being made thereof, shall be confiscated. It is, however, understood that the exclusion stipulated in the present article shall take place only so long and so far as the Most Christian King or the United States shall not in this respect have granted an exemption to some other nation.

"ART. 10. The United States, their citizens and inhabitants, shall never disturb the subjects of the Most Christian King in the enjoyment and exercise of the right of fishing on the Banks of Newfound-



land, nor in the indefinite and exclusive right which belongs to them on that part of the coast of that island which is designated by the treaty of Utrecht, nor in the rights relative to all and each of the isles which belong to his Most Christian Majesty—the whole conformable to the true sense of the treaties of Utrecht and Paris.”

Embarked in war with the greatest maritime power in the world, France had need of all her seamen; and to secure for her ships-of-war her fishermen absent at Newfoundland, her treaty of alliance with the United States was kept secret for some weeks to give time for their return. During hostilities, St. Pierre and Miquelon, if not almost abandoned by fishing-vessels, were the scene of no incidents to detain us.

At the peace in 1783, the whole subject of the French rights of fishing was examined and arranged. As will be seen, several important changes were made, and explanations exchanged, by the two contracting powers. It may be observed, further, that the *new* fishing-grounds acquired were thought less valuable than those which she relinquished, though the privileges obtained by France, considered together, were much greater than those provided in the treaty of 1763. The articles which relate to the subject in the treaty, and in the “declaration” and “counter declaration,” or separate articles, are as follows:

“ART. 2. His Majesty the King of Great Britain shall preserve in full right the island of Newfoundland and the adjacent islands, in the same manner as the whole was ceded to him by the 13th article of the treaty of Utrecht, save the exceptions stipulated by the 5th article of the present treaty.

“ART. 3. His Most Christian Majesty, [of France,] in order to prevent quarrels, which have hitherto arisen between the two nations of England and France, renounces the right of fishing, which belongs to him by virtue of the said article of the treaty of Utrecht, from Cape Bonavista to Cape St. John, [Point Riche,] situated on the eastern coast of Newfoundland, in about fifty degrees of north latitude; whereby the French fishery shall commence at the said Cape St. John, [Point Riche,] shall go round by the north, and, going down to the western coast of the island of Newfoundland, shall have for boundary the place called Cape Ray, situated in forty-seven degrees fifty minutes latitude.

“ART. 4. The French fishermen shall enjoy the fishery assigned them by the foregoing article, as they have a right to enjoy it by virtue of the treaty of Utrecht.

“ART. 5. His Britannic Majesty will cede, in full right, to his Most Christian Majesty the islands of St Pierre and Miquelon.

“ART. 6. With regard to the right of fishing in the Gulf of St. Lawrence, the French shall continue to enjoy it conformably to the 5th article of the treaty of Paris,” [1763.]

In the “declaration” on the part of Great Britain, it is said that—

“In order that the fishermen of the two nations may not give cause for daily quarrels, his Britannic Majesty will take the most positive measures for preventing his subjects from interrupting, in any manner, by their competition, the fishery of the French, during the temporary exercise of it which is granted to them, upon the coasts of the island of Newfoundland; and he will, for this purpose, cause the fixed settlements which shall be formed there to be removed.

"His Britannic Majesty will give orders that the French fishermen be not incommoded in cutting the wood necessary for the repair of their scaffolds, huts, and fishing-vessels. The 13th article of the treaty of Utrecht, and the method of carrying on the fishery which has at all times been acknowledged, shall be the plan upon which the fishery shall be carried on there. It shall not be deviated from by either party—the French fishermen building only their scaffolds, confining themselves to the repair of their fishing-vessels, and not wintering there; the subjects of his Britannic Majesty, on their part, not molesting, in any manner, the French fishermen during their fishing, nor injuring their scaffolds during their absence. The King of Great Britain, in ceding the islands of St. Pierre and Miquelon to France, regards them as ceded for the purpose of serving as a real shelter to the French fishermen, and in full confidence that these possessions will not become an object of jealousy between the two nations, and that the fishery between the said islands and that of Newfoundland shall be limited to the middle of the channel."

In the "counter declaration" on the part of France, it is said that—"The King of Great Britain undoubtedly places too much confidence in the uprightness of his Majesty's intentions not to rely upon his constant attention to prevent the islands of St. Pierre and Miquelon from becoming an object of jealousy between the two nations. As to the fishery on the coasts of Newfoundland, which has been the object of the new arrangements settled by the two sovereigns upon this matter, it is sufficiently ascertained by the 5th article of the treaty of peace signed this day, and by the declaration likewise delivered this day by his Britannic Majesty's ambassador extraordinary and plenipotentiary; and his Majesty declares that he is fully satisfied on this head. In regard to the fishery between the island of Newfoundland and those of St. Pierre and Miquelon, it is not to be carried on, by either party, but to the middle of the channel; and his Majesty will give the most positive orders that the French fishermen shall not go beyond this line. His Majesty is firmly persuaded that the King of Great Britain will give like orders to the English fishermen."

The fishery at St. Pierre and Miquelon, at the period of the French revolution, was in a prosperous condition; but the confusion and distresses of civil war soon produced a disastrous change, and the fishing-grounds were in a great degree abandoned for several years. In 1792, the number of men employed both at Newfoundland and Iceland was less than thirty-four hundred. The hostile relations with England which followed the domestic commotions caused additional misfortunes, until the peace of Amiens, in 1802.\*

In the year 1800, by a treaty between the United States and France, concluded at Paris, it was stipulated that "neither party will interfere with the fisheries of the other on its coasts, nor disturb the other in the exercise of its rights which it now holds, or may acquire, on the coast of Newfoundland, in the Gulf of St. Lawrence, or elsewhere on the

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\* The fishing privileges which were continued to France were again the subject of complaint at the peace of Amiens. The Right Hon. William Windham, in a speech in Parliament, November 4, 1801, said that, by the terms of the proposed peace, "France gives nothing, and, excepting Trinidad and Ceylon, England gives everything;" and in the enumeration of cessions which "tended only to confirm more and more the deep despair in which he was plunged in contemplating the probable consequences of the present treaty," he mentioned, "in North America, St. Pierre and Miquelon, with a right to the fisheries in the fullest extent to which they were ever claimed."



American coast northward of the United States. But the whale and seal fisheries shall be free to both in every quarter of the world." Napoleon, at this time, was "premier consul of the French republic."

The French cod-fishery at Newfoundland was hardly re-established at the peace of Amiens, when renewed hostilities with England occasioned fresh calamities. Until the downfall of Napoleon, in 1814, this branch of distant industry was pursued without vigor, and with severe losses.

At the peace, a deputation of English merchants and others connected with Newfoundland entreated their government to refuse to France continued rights of fishing allowed under the treaties of 1713, of 1763, and of 1783. But the British ministry, aside from general considerations, regarded the restoration of the Bourbons as an event of momentous consequence to Europe, and confirmed to France all her foreign possessions exactly as they stood at the commencement of the war. The Newfoundland colonists have never ceased to complain of the renewed competition which this policy required them to meet. They contend that, whatever was the opinion in 1783, the fishing-grounds along the shores from Cape Ray to Cape John, which are enjoyed by the French to the exclusion of all others, are, in the judgment of every person competent to decide, the very best at Newfoundland; and they further insist, by reason of the advantages possessed by France and the United States, that the English deep-sea fishery has been abandoned. These and similar statements are to be found in official papers and in private letters, and are never omitted by the colonists in their conversations on the subject of their fisheries.

It may not be unkind to reply that the French and American fishermen are *industrious*, and that there need be no other explanation of their success.

The insertion here of the thirteenth article of the treaty of Paris in 1814 is not necessary. As already intimated, the French were confirmed in the rights which they possessed previous to the war. The eleventh article of the treaty of Paris in the following year, at the general pacification in Europe, reiterates the confirmation. Reference, therefore, to the articles of the treaty of 1783, to the "declaration" and "counter declaration" recorded at length in the proper connexion, will afford a perfect knowledge of the present extent, limitations, and localities of the fishing-grounds of France in the American seas.

With peace came prosperity. In 1816, the French tonnage at Newfoundland was nearly thirty-one thousand; the amount in 1823, however, appears to have been reduced nearly one-half. It rose suddenly, and in a single year, to about thirty-seven thousand, and, increasing annually, except in 1825, was upwards of fifty thousand in 1829. In the succeeding ten years the increase was only five thousand.

The number of vessels employed in 1841 and two years later was about four hundred; and the number of seamen in 1847 was estimated at twelve thousand. These facts, on which I rely, afford proof that the Newfoundland fishery is now prosecuted with energy and success. To follow the statements of the English colonists which are to be met with in official documents, the number of men engaged at St. Pierre and Miquelon, and on various parts of the coast between Cape Ray and Cape John, should be computed at twenty-five thousand.

There is the same authority for estimating the annual catch of fish at one million of quintals.

I regard the views of M. D. L. Rodet, of Paris, as far more accurate. He states that, "*without her colonies,*" the cod-fishery would "*become nearly extinct;*" that these colonies "*only consume annually eighty thousand quintals;*" that foreign nations "*scarcely take a fifth*" of the catch; and that "*it is by submitting to the exorbitant duties, which at any moment may be changed into prohibition, that the precarious and trifling market in Spain is retained.*" A very large proportion, then, of the produce of the cod-fishery is consumed in France; and it is a sufficient refutation of the estimate of the English colonists to say that the quantity remaining after deducting the exports, as computed by M. Rodet, is not wanted in that kingdom.

The number of vessels since the peace of 1815 has not exceeded four hundred, except in the single year of 1829; and, assuming that the statement in discussion is correct, these vessels employed an average of sixty men each, or double the number which, as all persons familiar with the business well know, is necessary on board as fishermen, or on shore as "shoresmen." The same fallacy exists as to the catch; for a million of quintals for four hundred vessels is twenty-five hundred quintals to each, or considerably more than double the mean quantity caught by the vessels of any flag in the world. To allow liberally for the catch of the "boat fishery," and to consider "boat fishermen" as included in the estimate, I cannot think that the figures of the English colonial documents are accurate by quite one-half. If further evidence of exaggeration be wanted, it may be found in the grave assertions of the same writers that our own vessels fishing in the waters of British America are manned with upwards of thirty-seven thousand men, and catch in a year one and a half millions of quintals of fish!

The statements thus refuted are of consequence, as will be seen in another part of this report.

Equally exaggerated are the averments that the French and American fisheries, "bolstered up by bounties and prohibitions," have "as completely swept" the English flag from the Grand Bank of Newfoundland "as if Lord Castlereagh had conceded the exclusive right" in 1814, or as if the "combined fleets of France and America had forced it" to retreat to "the in-shore or boat fishery;" and that the "French and Americans, having taken possession of the Grand Bank," have, by so doing, "extended lines of circumvallation and contravallation round the island, preventing the ingress or egress of fish to and from the shore, and, according to the opinions of those best qualified to judge, greatly injuring the in-shore fishery—the only fishery left to British subjects, and that only to a portion of the island."

Deferring a full answer to these complaints until the subject of colonial allegations relative to our own aggressions and violations of our treaty rights are considered in detail, the only answer necessary to be made here is, simply, that the "ingress" and "egress of fish to and from the shore" *has not entirely ceased, as yet*, since the export of codfish from the English Newfoundland fishery amounts to nearly one million of quintals annually! The lamentations of a people who, though "completely swept" from their own outer fishing-grounds, still show, by their own returns of the customs, that they have sold,



between 1841 and 1849, both inclusive, *a mean quantity of nine hundred and sixty-seven thousand quintals* (to be exact in the statistics) annually, may well excite a smile.

That the charge against the French fishermen of trespassing upon the fishing-grounds reserved to British subjects is true, to a considerable degree, may be admitted. Her Majesty's ships-of-war have sometimes found them aggressors, not only at Newfoundland, but on the coast of Labrador. Troubles from this source occurred in 1842; and in the following year the British sloop-of-war *Electra*, in endeavoring to drive off a vessel fishing on the southwesterly shore of Newfoundland, unfortunately killed one man and wounded others on board of her. It appears that the *Electra* was on the station for the purpose of enforcing the treaty stipulations; that one of her boats gave chase to the French vessel, and, not being able to come up with her, fired across her bows for the purpose of bringing her to; that, not having accomplished this object, another shot was fired over her, which, proving as ineffectual as the first, was followed, by order of the officer in charge, by a shot aimed directly on board, and producing the results mentioned. The affair created much excitement at the moment. A French frigate arrived at the capital to demand explanations, and the governor of Newfoundland immediately sent a despatch to the ministry "at home," stating the facts of the case. The offence, in this instance, consisted merely in taking bait on the shore not within the limits prescribed for vessels of the French flag by the treaties of 1713 and of 1783. The officer in command of the *Electra's* boat is said, by the colonists, to have acted in accordance with the rules of the service; but a contrary opinion was expressed by the French.\*

The "Bultow" system of fishing is clearly in violation of treaty stipulations. Prior to the peace of 1815, there is good reason to be-

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\* The French fishermen suffered much at the hands of the British officers who guarded the coasts in 1852. A colonial newspaper contained the following account:

"It appears that the *Charles*, under the command of James Tobin, esq., commissioner of fisheries, has been doing service at Belleisle, where, on the 29th ultimo, there were about one hundred French fishermen, with about thirty batteaux, who were just commencing their annual invasion of British rights. Mr. Tobin immediately ran down to H. M. brig *Sappho* to obtain help, as James Finlay had not then arrived with his crew. His messenger had to travel seven miles over land on the night of that day, and by half-past eleven of the same night returned with an intimation from Capt. Cochran that he would land the required force by daylight on the following day in Black Joe Cove, whither Mr. Tobin then proceeded with the *Charles*, and found that the Frenchmen had been already routed by the men of the *Sappho*, and were running in their batteaux under reefed foresail and mainsail—the wind blowing half a gale at the time. The *Charles* escorted them round the island of Belleisle, and then left them, without one fish, to make the best of their way in a pelting storm to Quirpon."

Near the close of the season, another colonial newspaper stated that—

"The *Vigilance* brig-of-war vessel, on the coast of Newfoundland, has damaged the French fisheries very much. Fifty vessels of the fleet in the straits of Belleisle will return home, having eighty thousand quintals short of last year's catch."

These proceedings, it would seem, were authorized by the ministry, under the general plan adopted in 1852 to prevent encroachments on the fishing-grounds. Admiral Seymour, in a letter to the governor of Newfoundland, remarks that—

"Her Majesty's government are so desirous that ample means should be given to check the numerous encroachments which have been represented to have taken place in the last years at Belleisle and the coast of Labrador, that I am further authorized to hire and employ some small schooners, for which I am to provide officers and men, for the purpose of carrying the object of her Majesty's government fully into effect on the coast of Labrador, under the direction of the captain of the ship or steamer there employed."

lieve that both French and English fished from the decks of their vessels, without coming to anchor, and without lines moored with several thousand baited hooks attached thereto, as at present. There is much difference of opinion as to the degree of injury to the shore, or English fishery, on this account; but since the question is one to be settled entirely by the "declaration" in 1783—namely, that "the method of carrying on the fishery which has at all times been acknowledged shall be the plan upon which the fishery shall be carried on there," and that "it shall not be deviated from by either party,"—there need be no inquiry into any other matter. The "plan" of the "Bultow" had not "*at all times been acknowledged*" in 1783, and it is therefore an aggression.

The last complaint of the English colonists which I shall notice is, that "the exclusive right of fishing exercised by the French from Cape Ray to Cape John is a usurpation." The "declaration" just referred to was framed expressly that "the fishermen of the two nations may not give cause for daily quarrels;" and different fishing-grounds were assigned to each, to accomplish an object so desirable to both. Moreover, the British ministry engaged to remove "the fixed settlements" of their own people within the limits prescribed to the French, and actually issued orders for the purpose soon after the conclusion of the treaty. The intention was, I cannot doubt, that vessels of the two flags should never pursue the cod on the same coasts; and unless the words quoted convey *this* meaning, they mean nothing. The experience of more than a century had shown that, under any other arrangement, "daily quarrels" would be inevitable. I submit, with deference, that the interest of all parties imperatively requires that people of different origin, language, and religion, and of national prejudices almost invincible, should be kept apart.

The French government wisely protect their fisheries by bounties—wisely consider them of national importance.\* Without its aid, they

\* [TRANSLATION.]

The National Assembly of France has passed a law of the following tenor relative to the great maritime fisheries.—June 24th, 9th and 22d July, 1851.

CAP. I.—COD-FISHERY.

From the 1st January, 1852, to the 30th June, 1861, the bounties granted for the encouragement of the cod-fishery will be fixed as follows:

1st.—*Bounty on the outfit*—

Fifty francs per man of the crew employed at the fishery, either on the coast of Newfoundland, at St. Peter's and Miquelon, or on the Grand Bank, and possessing a drying-place.

Fifty francs per man of the crew employed in the Iceland fishery, without a drying-place.

Thirty francs per man of the crew employed at the fishery on the Grand Bank of Newfoundland, and without a drying-place.

Fifteen francs per man of the crew employed at the Dogger Bank fishery.

2d.—*Bounty on the produce of the fishery*—

Twenty francs per metric quintal of dry codfish, the produce of the French fishery, to be shipped, either direct from the fishing settlements or from the ports of France, for the markets of the French colonies of America and India, or for the settlements on the west coast of Africa, and other transatlantic countries—provided, always, that the fish be landed at a port where there is a French consul.

Sixteen francs per metric quintal of dry codfish, the produce of the French fishery, shipped either direct from the fishing settlements or from the ports of France, and destined for the countries of Europe and the foreign states on the shores of the Mediterranean, Sardinia and Algeria being excepted.

Sixteen francs per metric quintal of dry codfish, the produce of the French fishery, that may be imported into the French colonies of America and India, and other trans-



admit that "the cod-fishery could not exist." This fishery, says M. Senac, "is a productive industry; and it furnishes more than a fifth part of the whole number of our seamen, and by far the best portion of them. There is no cheaper, better, or more useful school for the formation of seamen for the navy, and none is more capable of extension and development. The doubling of the consumption and exportation of the produce of the fisheries would furnish our fleets with twelve thousand more seamen."

We have seen that when, in 1778, France embarked in our revolutionary struggle, her fishermen, absent at Newfoundland, were recalled to enter her ships-of-war. The same reliance is placed upon them now. War was apprehended in 1841, and M. Thiers followed the example of the statesmen referred to; and M. Rodet affirmed that, "without the resources which were found in the sailors engaged in the fisheries, the expedition to Algiers could not have taken place."

These reasons are not only sufficient to justify, but to demand, national encouragement. But it may be urged, in addition, that the open or deep-sea cod-fishery differs from almost every other employment; that in war it is nearly or quite destroyed; that in peace it cannot be pursued for more than four or five months in a year; that often skill and industry are insufficient to insure good fares; and that, when success attends severe toil and exposure, the fishermen barely subsist. The effects of a "bad catch" are, indeed, sad and calamitous. The disasters of 1847 afford a recent and a forcible illustration. In that year the French cod-fishery proved a failure. The quantity of fish caught was scarcely a sixth part of that of former seasons; and the fishermen, discouraged, abandoned the business as early as the middle of August. The labor of the summer and the expenses of repairs and of outfits lost, the actual want of food and clothing until another year came round was alone prevented by the bounty allowed by the government.

The manner of fishing is now the only topic that need claim attention. It is to be observed that the principal fishing-grounds are three, and that on each there is a difference in the mode of operations and in the size of the vessels. First, the fishery on the *coasts* of Newfoundland, which has always been considered the most important, as being more certain and employing the greatest number of men. The vessels are of all sizes—from thirty to two hundred, and even three hundred tons. The latter size is, however, rare. When the vessel arrives on the coast, which is generally early in June, she is dismantled. Her boats, with two men and a boy in each, are sent out every morning, when the weather will permit, to fish until night. On the return in the evening, the fish taken are split, salted, and put in "*kenches*" or piles; remaining in piles a few days, they are "washed out" and dried until they are fit to ship. These processes are repeated from day to day until the fare is completed, or the season has passed

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atlantic countries, when said fish are exported from the ports of France without having been there landed.

Twelve francs per metric quintal of dry codfish, the produce of the French fishery, shipped for Sardinia and Algeria, either direct from the fishing settlements or from the ports of France.

Twenty francs per metric quintal of the hard roe of codfish, the produce of the French fishery, brought into France by their fishing-vessels.

*Note.*—One kilogramme is equal to 2 lbs. 3½ oz.; 220½ lbs. equal to 1 quintal metrique (say metric quintal).

away. Towards the close of September, fishing is suspended, and the vessels depart for France or the West Indies.

The Grand Bank fishery is pursued in vessels of between one and two hundred tons burden, with two strong *chaloupes*, or boats, to each. From sixteen to twenty men compose a crew. The vessels proceed first to St. Pierre, land the shore-fishermen and "curers," and thence take position on the banks, anchoring in seventy or eighty fathoms of water. Everything in readiness the *chaloupes* are launched and sent out at night to place the "ground-lines," to which are attached some four or five thousand hooks. When not too boisterous, these lines are examined every day, and the fish attached to the hooks split, salted, and placed in the hold of the vessel. Meanwhile, the fish caught on board by the men not assigned to the boats are treated in the same way. The first fare is usually secured in June, and carried to St. Pierre to be dried. The second fare is cured at the same place; but the third—if fortunately there be another—is commonly carried to France "green."

This fishing is difficult and dangerous. It requires expert and daring men. It is prosecuted in an open, rough, and often a stormy sea, and frequently involves the loss of boats and their crews.

The third fishery, at St. Pierre and Miquelon, is similar, in some respects, to that between Cape Ray and Cape John, on the coast of Newfoundland. Boats, instead of vessels, are, however, employed in it. The boats of the two islands are between three and four hundred in number, and require two men to each. They go out in the morning and return at night. Thus, as in all shore-fisheries, the fishermen always sleep at their own homes. As this is the only business of the islands nearly all the men, women, and children are engaged in catching or curing. The season opens in April, and closes usually in October.

We have seen the importance attached by France to her immense American domains and with what pertinacity she maintained her pretensions to the monopoly of the fishing-grounds. It remains to speak more particularly than has yet been done of the two lone, bare, and rocky islands that remain to her as monuments of the vicissitudes of human condition and of national humiliation.

The situation of St. Pierre and Miquelon commands the entrance of the Gulf of St. Lawrence. The growth of wood is insufficient even for fuel. They produce no food, and the inhabitants are dependent on France and other countries for supplies. The population of St. Pierre in 1847 was 2,030, of which about one-quarter was "floating" or non-resident. The population of Miquelon at the same time was 625.

There are several Catholic churches and schools, priests, monks, and nuns. In 1848, a hospital, sufficiently commodious to receive upwards of one hundred sick persons, was erected. The dwellings are of wood. The government-house is of the same material, and plain and old-fashioned. The streets are narrow, short, and dirty. The official personages are a governor, a commissary or minister of marine, a harbor-master, and some inferior functionaries. The military, limited by treaty to fifty men, consist of about thirty *gens d'armes*. Upon the station is a single armed ship, though other armed vessels are occasional visitors. The present light-house was erected in 1845, at a cost of 80,000 francs, and, well built of brick, is a substantial edifice.

Such are the TWO ISLANDS—TWO LEAGUES IN EXTENT—which remain to the power that once possessed the whole country bordering



on the Mississippi, the limitless regions penetrated by the St. Lawrence—Acadia, from Canseau, in Nova Scotia, to the Kennebeck river, in Maine; the island of Cape Breton; and the hundred other isles of the bays of the northern and eastern possessions.

*French cod-fishery.*

Years.	No. of vessels.	Tonnage.	Number of men.	Quintals of fish.	Value.
1504					
1527	12				
1577	150				
1578	150				
1615	100				
1721	400				
1744	564		27,500	1,441,500	
1745	100				
1768	259	24,420	9,722	200,000	\$861,723
1773	264	24,996	10,128		
1774			15,137		
1786			7,000	426,400	
1787			6,000	128,590	
1816		30,954	8,108		
1823	184	16,258	3,655		
1824	348	36,999	6,672		
1825	336	35,172	6,311		
1826	341	38,038	7,088		
1827	387	44,868	8,238		
1828	381	45,034	7,957		
1829	414	50,574	9,428		
1830	377	45,036	8,174		
1831	302	35,180	6,243	300,000	
1833			10,000		
1834			10,000		
1835				300,000	
1839		54,995	11,499		
1841	400		11,900		
1843	400				
1847			12,000	450,000	

COD-FISHERY OF SPAIN.

Participating in the excitement which prevailed in Europe on the discovery in the American seas of varieties of fish not previously known or used in the fasts of the Roman church, Spain was an early competitor with France and England. Vessels of her flag were certainly at Newfoundland as soon as the year 1517. Sixty years later, the number of her vessels employed in the fishery there is estimated at one hundred. The number rapidly diminished. Sylvester Wyat, of Bristol, England, who made a voyage to the St. Lawrence and Newfoundland in 1593, found only eight Spanish ships in a fleet of upwards of eighty sail of French and English vessels. From the remarks of Smith—who became the father of Virginia—it would seem that in the early part of the seventeenth century, the Spanish fishery was pursued with greater vigor than at the time last mentioned. But the greater wealth to be acquired in the gold regions of South America soon lured the Spaniards from an avocation of so great toil, and of so uncertain rewards. No controversy between Spain and England as to their respective rights to the fishing grounds, ever arose.

Spain retired from our waters in peace, and at her own pleasure. Little is heard of her in connexion with our subject for quite a century, and until the peace of 1763. Her claim—resting on discovery—ever vague and uncertain at the north, had become almost as obso-

lete as that of the King of England to the title of King of France. Still, in the definitive treaty concluded at Paris, she formally renounced "all pretensions which she has heretofore formed, or might form, to Nova Scotia or Acadia, in all its parts, and guaranties the whole of it, and with all its dependencies," and ceded and guarantied to England, "in full right, Canada, with all its dependencies, as well as the island of Cape Breton, and all other islands and coasts in the gulf and river of St. Lawrence; and, in general, everything that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights acquired by treaty or otherwise." With this treaty the history of the Spanish fishery in America terminates.\*

#### COD-FISHERY OF PORTUGAL.

An account of this fishery may be embraced in a single paragraph. If materials exist by which to ascertain its progress and final extent, I have not been able to find them.

Portuguese vessels were at Newfoundland as early as those of Spain; and in 1577, the number employed there is estimated at fifty. These two facts comprise the substance of my information upon the subject, except that Portugal, like Spain, soon abandoned all attention to the claims derived from the voyages of her navigators to the northern parts of our continent, and devoted her energies and resources to colonization in South America, and the acquisition of wealth in the mines of Brazil.†

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#### PART II.—NEWFOUNDLAND—NOVA SCOTIA—CAPE BRETON—PRINCE EDWARD ISLAND—MAGDALENE ISLANDS—BAY OF CHALEURS—LABRADOR—NEW BRUNSWICK.

##### ENGLISH COD-FISHERY—NEWFOUNDLAND.

Newfoundland is the oldest colony of England in America. It is said that in the public library of Venice there is a map, constructed by Andrea Bianco, in 1436, which authorizes the conjecture that it was known to fishermen before the voyage of Cabot, in 1497. The story, to state its substance in a word, is, that the island *Scoraxia*, or *Stoxa-*

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\* Spain relinquished her rights at the peace of 1763, with reluctance, though she had long ceased to exercise them. A letter of Sir Joseph Yorke is quoted in the correspondence of Horace Walpole, in which it is said: "By what I hear from Paris, my old acquaintance, Grimaldi, is the cause of the delay in signing the preliminaries, insisting upon points neither France nor England would ever consent to grant, such as the liberty of fishing at Newfoundland; a point we should not dare to yield, as Mr. Pitt told them, though they were masters of the Tower of London."

† The rivers and coasts of Portugal abound in fish. But the fisheries are neglected by the government. The whole number of sailors and fishermen who belonged to the kingdom in 1826, was only 18,700. I find in an official document a statement which shows that during the twenty-four years ending in 1825, the quantity of dry codfish imported into Portugal was seven million five hundred and twenty thousand quintals, of the value of more than thirty-nine millions of dollars! As late as the year 1839, certainly, the government pursued the policy of levying a tax or duty on the produce of the domestic or coast fishery; a fact which enables us to account for the miserable condition of the kingdom, as regards its maritime strength and resources.



*fixa*, on the map, and the island of Newfoundland, are identical, because the codfish is called *stock-fish* in the northern languages.

The English resorted to Iceland\* for the cod, previous to the year 1415, but there is no account of their fishing at Newfoundland prior to 1517. Some writers suggest that the French commenced at the same time. But the fact, generally admitted, that ships from England, France, Spain, and Portugal, to the number of fifty, were employed in 1517, is alone sufficient to show that the fishing grounds had been visited for several years. Indeed, to consider that the French went to Newfoundland for the first time in 1504, and that in thirteen

\* The Icelanders, at the present time, derive their chief subsistence and profit from the sea. They live principally on the shores and harbors, where fish are plentiful. The fishing season commences in February, and closes in May. The fishermen wear a dress of leather, rubbed over with train-oil until it is nearly impervious to water. They fish with line and hooks, baited with shell-fish, or pieces of flesh. They have lately become acquainted with nets, and use them in the herring fishery. When they leave the shore they take off their hats, and offer up a petition for success, and recommend themselves to the Divine protection in a prayer or hymn. They then row to the fishing grounds, and continue there all day. In 1804 the total number of boats employed was twenty-one hundred and sixty-three, namely: 208, with eight and ten oars; 1,068, with four and six oars; and 887 of smaller size. Bessestaar is the seat of a good academy, with a collection (in 1826) of fifteen hundred volumes, which, says Malte Brun, "is no doubt the most northern library in the world." Iceland, he observes, "produces no salt; but the water of the surrounding sea is fully as saline as that of the Mediterranean. The salt which the Icelanders obtain from it gives a bluish tint to fish."

Reikiavik, according to another writer, was selected as the seat of government "for the convenience of its harbor, and for the gravel beach—a thing of rare occurrence in Iceland." The exports of fish from Reikiavik, in 1806, were much larger than from any other place.

The Dutch cod-fishery is of importance.

[Translation.]

STATE PAPER OF THE KINGDOM OF THE NETHERLANDS.

No. 13.—*Act of 6th March, 1818, for the encouragement of the Iceland cod-fishery.*

We, William, by the grace of God King of the Netherlands, Prince of Orange Nassau, Grand Duke of Luxembourg, &c.

Be it known to all those who shall see these presents, or hear them read, greeting:

Considering that the little, or Iceland, cod-fishery has been continually supported and encouraged by premiums out of the public treasury in behalf of those who carry on this branch of industry, so important to the prosperity of the country;

And that the reasons which, in former times, pleaded for the allowance of those premiums, have still, at the present time, their full force and weight:

We have therefore heard our council of state, and, with the advice of the States General, do hereby decree and direct:

ARTICLE I. There shall be paid out of the public treasury a premium of five hundred guilders for every voyage of each ship, which, for account of our subjects, is fitted out in this kingdom, and shall sail from one of its ports during the years 1818, 1819, and 1820, for Iceland to carry on the little fishery—that is, the cod-fishery—between the sixty-fifth and sixty-seventh degrees of north latitude.

ART. II. In cases where particular circumstances have occurred during the voyage, we reserve to ourselves the regulation of the premium in such a manner as those circumstances may deem to require.

We order and command that the present shall be inserted in the State paper, and that all ministerial departments and authorities, colleges and officers, are charged with the due execution of these presents.

Given in Gravenhague, (Hague,) the 6th March, in the year 1818, in the fifth of our reign.

WILLIAM.

By the King: A. R. Falk.

years, and in the infancy of distant and perilous voyages, their adventures had attracted the attention of three other nations to the extent just stated, is to allow an increase of flags and of vessels so rapid as to still require explanation, without a knowledge of the fishing enthusiasm of the period. Besides, some forty or fifty houses for the accommodation of fishermen were built at Newfoundland as early as 1522.

A letter is preserved in the Memoir of Sebastian Cabot, written by John Rut to Henry the Eighth, and dated at St. John, Newfoundland, August 3, 1527, which seemingly warrants the conclusion that the English fishery, at that time, was of little consequence, since he states that he found "eleven saile of Normans, and one Brittain, and two Portugall barkes" in that harbor, but makes mention of no others, and proposes to sail along the coast to "meete" the only vessel of his own flag known by him to be in that region.

An effort to found a colony was made, however, in 1536, under the auspices and at the expense of Mr. Hore, a wealthy merchant of London. A company of one hundred and twenty persons was formed, of whom thirty were gentlemen of education and character. They arrived at Newfoundland, but accomplished nothing. Many perished of starvation. The survivors fed on the bodies of the dead, and finally reached England.

Twelve years later, we find that the fishery was considered of great national importance, and worthy of legislative encouragement. Thus, an act was passed by Parliament imposing severe penalties on persons eating flesh on fish-days. The punishment for the first offence was a fine of ten shillings, ten days' imprisonment, and abstinence from meat during the same time; while for the second, these inflictions were doubled. The sick and aged, to whom flesh was necessary, were exempted on obtaining licenses from the ecclesiastical authorities.\*

Another act, of 1548, and remarkable as the first of England which relates to America, had special reference to Newfoundland, and to the abuses that existed there. Its preamble is quaint. "Forasmuch," it

\* A license to eat meat on fish-days is too great a curiosity, in our time, to be omitted. The following is a copy of one, granted in the reign of James the First, of England:

"Whereas Mr. Richard Young, of Okebourne St. George, in the countie of Wiltes, Esquire, is a Gent. of good age, subject to many sicknesses, diuerse infirmities, and in bodey of a very weak constitution, and hath with him in his house his mother, Mrs. Ann Young, widowe, a Gent. of great age (above four score) very sicklye, feeble, and subject to diuerse maladies, and having others in his house sicke, and have long bine, to whom *fish*, by reason of their age, sicknesses and diuerse infirmities, is iudged by the skilful (as I am informed) to be very hurtfull to their bodies, and likelie to breede and bring diuerse diseases and sicknesses upon them: They therefore haue requeste me, their minister, the promises considered, to give and grant them license, this time of Lent, to eate flesh, for the better avoidinge of sicknesses and diseases which, by their absteinyng fro flesh, might growe upon them: Know ye, therefore, that I Adam Blythe, Mr. of Arts and of Okebourne aforesaid, Viccar, duelye considering this theire so lawfull request, and tendering the helth and wellfare of the said Mr. Richard Young and Mrs. Ann Young, his naturall and aged mother, have given and granted, and by these presents do give and grant to the said Mr. Richard Young and Mrs. Ann Young, and to fioure persons more, leave, power and license, (so farr as in me lieth, and by lawe safely I may without danger, and no further) to dresse or cause to be dressed, for them to eate, flesh this time of Lent now following, prohibitinge *never the lesse, and by this grant forbidding them, all manner of shamble meates whatsoever.* In witness whereof, to this present license I have put to my hand and seale. Dated and given at my house in Okebourne aforesaid, february this xiiii<sup>th</sup>, 1618.

By me, ADAM BLYTHE, the Viccar *ibid.*"



commences, "as within these few yeeres now last past there have bene levied, perceived, and taken by certain officers of the admiraltie, of such marchants and fishermen as have used and practised the adventures and journeys into Iceland, Newfoundland, Ireland, and other places commodious for fishing, and the getting of fish, in and upon the seas and otherwise, by wey of marchants in those partees, divers great exactions, as summes of money, doles or shares of fish, and such other like things, to the great discouragement and hindrance of the same marchants and fishermen, and to no little dammage of the whole commonwealth, and thereof also great complaints have bene made, and informations also yere to the King's Majesties most honorable counsell; for reformation whereof," &c., &c. From this period, and in consequence of the measures adopted, rewards to officers of the government were discontinued, and the Newfoundland fishery became entirely free to every inhabitant of the realm.

It is of interest to remark that the foreign trade of England was then limited to the Flemish towns, and to the fishing grounds. To extend commerce by still further encouragement to the branch of industry before us, a curious act of Parliament was passed in 1563, which provided "*that as well for the maintenance of shipping, the increase of fishermen and marines, and the repairing of port-towns, as for the sparing of the fresh victual of the realm, it shall not be lawful for any one to eat flesh on Wednesdays and Saturdays,\* unless under the forfeiture of £3 for each offence, excepting in cases of sickness and those of special licenses to be obtained.*" For these licenses peers were required to pay about six dollars, knights and their wives about three dollars, and other persons one dollar and a half; but neither peer nor commoner could eat beef on the two prohibited days. As will be remembered, this was a sort of transition period in religion; and, fearing that the act would be considered as *popish*, it was provided that "whoever shall, by preaching, teaching, writing, or open speech, notify that any eating of fish, or forbearing of flesh, mentioned in this statute, is of any necessity for the serving of the soul of man, or that it is the service of God otherwise than as *other* politic laws are and be, then such persons shall be punished as spreaders of false news ought to be." Such were the means adopted to increase "shipping" in the infancy of English navigation.

These laws were speedily followed by others. In 1571, fishermen of the realm were permitted to export sea-fish free of the customs; while the same year, and by another act, foreign fishermen anchoring on the English coast, or interfering in waters where nets were used, were liable to seizure and confiscation.

Meantime the Newfoundland fishery was prosecuted with great vigor. The number of vessels employed in it, of various flags, is estimated at three hundred and fifty or four hundred. The ships of France and Spain, in 1577, were much more numerous than those of England, for the reason, as is stated, that the English merchants still sent a part of their vessels to Iceland. It appears, however, that the English ships were the best; that they gave protection to those of other nations, and exacted tribute or payment for the service. The

\* Palgrave, in his History of the Anglo-Saxons, observes of the origin of the names of the days of the week in the Saxon mythology, that "Lastly came *Sæter*, from whom Saturday is named. He was represented as standing upon a fish, and he held a bucket in his hand, so that he appears to have been a water deity."—London ed., p. 53.

whole commercial marine consisted of only 1,232 vessels in 1582, of which 217 were upwards of 80 tons. To assume that the fifty then visiting Newfoundland were of the latter class, is to state that nearly one quarter part of the navigation of England, suitable for distant voyages, was employed in fishing.

In 1583 Sir Humphrey Gilbert, under the first charter that passed the great seal of England for colonization in America, arrived at Newfoundland. He found thirty-six vessels in the harbor of St. John of different nations, and was refused entrance; but on hearing that he had a commission from Queen Elizabeth, they submitted.

He took possession of the island with great pomp and ceremony, and granted lands and privileges to fishermen in fee, on condition of the payment of quit-rent. It is important to remark that the right of England to Newfoundland and its fishing-grounds rests on the discovery of Cabot, in 1497, and on the possession of Gilbert at this time.

Sir Humphrey was accompanied by smiths, shipwrights, masons, carpenters, "mineral men," and refiners, and, to win the savages, toys, such as morris-dancers and hobby-horses, were provided in ample quantities. The crews of his vessels, and, indeed, some of the artisans, were desperate men. The seamen on board of his own ship, the *Swallow*, were, it is said, chiefly pirates. Poorly clad, and falling in with a French vessel returning from the fishing-ground, they determined to rob her to supply their wants. They not only executed their purpose, by stripping their victims of their clothing and of articles of food, but, by winding cords round their heads, produced such exquisite torture as to extort the surrender of their most hidden stores.

After a short tarry at Newfoundland, Sir Humphrey sailed for England. On the passage his vessel encountered a fearful gale, and he and all on board perished. He deserves honorable mention in our annals. He was the first great projector of an American colony, and a virtuous and enlightened man, and impoverished himself and injured his friends, and finally lost his life, in his endeavors to plant the Anglo Saxon race in the western hemisphere.

Assuming full title to the island and the fisheries, the English seem, for the moment, to have attempted to exclude the vessels of other nations, or, at least, to have compelled an acknowledgment of subjection to them as vested with proprietary rights. We find that, in 1585, a fleet of ships under Sir Bernard Drake made prizes of several vessels laden with fish and furs, which he sent to England.

Sir Humphrey Gilbert's voyage, disastrous as it was to himself and to others, was still the direct means of exciting the attention of his countrymen to adventures, which, by virtue of his patent, could be made under the protection of the crown, as to a British possession. I incline to believe that the Newfoundland fishery had never yet become the favorite of the English merchants.

By the statute-book there were one hundred and fifty-three days in a year on which British subjects were required to abstain from flesh, and to eat fish, and the demand for the products of the sea was, of course, immense. But the Iceland fishery was still prosecuted; and, that her people might not be molested there, Queen Elizabeth condescended to ask the forbearance and protection of Christian IV of Denmark, who claimed the Iceland seas as his own.

The observance of the interdictions as to flesh on fish-days was deemed of great moment, and among the tracts of the time was one



by John Erswick, who demonstrated the "benefits that grow to this realm," by reason thereof, in terms that show he was a devoted partisan of the "fishmongers."

The progress of the Newfoundland fishery during the ten years ending in 1593 was rapid beyond example, and Sir Walter Raleigh declared in the House of Commons that it was the stay and support of the west counties of England. Yet it was subject to interruptions. An example occurs in the case of Charles Leigh, a merchant of London, who, in 1597, made a voyage with two vessels, and who, while on the American coast, was assailed by the crews of French vessels, to the number of two hundred, who, landing pieces of ordnance, kept up a discharge of shot until a parley was held and the difficulty adjusted.

As the sixteenth century closes, we record the commencement of hostile relations between the fishermen and the red Indians of Newfoundland.

These Indians derived their food principally from the sea. The Europeans, in the course of their merciless warfare against them, destroyed their canoes, their nets, and their villages. The Indians endeavored to maintain their rights of fishing, and bravely contended with their opponents, until resistance was vain. The fish they required for consumption could not, in the very nature of things, have diminished the catch of their cruel rivals. Driven almost entirely from the sea, finally, and unjustly deprived of all means of support, they were compelled to plunder food to save themselves from starvation. Watched and waylaid by their foes, they were shot down whenever they came near any of the European fishing stations. In truth, whenever and wherever they were found, and whether resisting, or imploring for food, they were slain as men slay beasts of prey. Men, women, and children were slaughtered without discrimination; and even those who were too weak to raise the hand of supplication, were not spared. In a word, the natives of Newfoundland were exterminated by deeds as disgraceful and as damning as any which appear in the dealings of the Spaniards with those of Cuba, or South America.

From the fragmentary accounts that have come down to us of the events connected with our subject, we may conclude that the habits of the fishermen who visited the American coasts were loose and immoral. They could hardly have been otherwise. It was not until late in the sixteenth century that bibles, or other printed books, were in common use anywhere, or that the manufacture of writing-paper and time-pieces was commenced in England; while gentlemen who could not write still helped the memory by notches made in sticks, and ate their food without forks. Chimneys in dwelling-houses were rare; and even after the accession of Elizabeth, the floor of the presence-chamber of the royal palace was covered with hay. That, in this state of society, the humble class of whom I speak were rude, ignorant, lawless, and wicked, cannot excite surprise.

Our attention is now to be directed to incidents of moment. It is estimated that two hundred English ships went annually to Newfoundland about the year 1600, and that they employed, as catchers on board and as curers on shore, quite ten thousand men and boys. The vessels commonly left England in March and returned in September; the fishermen passing their winters at home, idly spending their summer's earnings, or "share-money." The prosperous condition of the

fishery was often spoken of in terms like the following: "To come," says Sir William Monson, (writing in 1610,) "to the particulars of augmentation of our trade, of our plantations, and our discoveries, because every man shall have his due therein, I will begin with Newfoundland, lying upon the main continent of America, which the King of Spain challenges as first discoverer; but as we acknowledge the King of Spain the first right of the west and southwest parts of America, so we, and all the world, must confess that we were the first who took possession, for the crown of England, of the north part thereof, and not above two years' difference betwixt the one and the other. And as the Spaniards have from that day and year held their possession in the west, so have we done the like in the north; and though there is no respect in comparison of the wealth betwixt the two countries, yet England may boast that the discovery, from the year aforesaid to this very day, hath afforded the subject, annually, one hundred and twenty thousand pounds, and increased the number of many a good ship, and mariners, as our western parts can witness by their fishing in Newfoundland."

That in the manner of prosecuting the fishery, much time and money were lost, is obvious to practical men without explanation. To plant a colony, and thus afford inducements to the fishermen to live permanently near the fishing-grounds, was an object highly desirable to persons of broad and liberal views. The plan, postponed by the untimely end of Sir Humphrey Gilbert, and the attention bestowed upon colonization in the more genial region of Virginia, by Sir Walter Raleigh, his kinsman and associate, was now to be renewed.

In 1610, and the year following, two charters were granted for the purpose. The first, from the rank of several of the patentees, is deserving special mention. The merit of the enterprise belongs to Mr. Guy, a merchant of Bristol, who published several pamphlets, and induced a number of commercial men of that city, and several persons of influence at court, to join him. Among the latter class were the celebrated Lord Bacon,\* who was then solicitor general; Lord Northampton, keeper of the seals; and Sir Francis Tanfield, chief baron of the exchequer. The patent states, that "divers" of the king's "subjects were desirous to plant in the southern and eastern parts of Newfoundland, whither the subjects of the realm have for upwards of fifty years been used annually, in no small numbers, to resort to fish," &c. The patentees, nearly fifty in number, were designated as "The treasurer and company of adventurers and planters of the citie of London and Bristol, for the colony and plantation of Newfoundland." The limits of their territory were fixed between Capes St. Mary and Bonavista, comprising that part of the eastern and southern coasts which had been hitherto the chief seat of the fishery.

The privileges granted were as liberal as could be desired; the only reservation being, that *all* British subjects should be allowed to fish at will, and free of tax or restraint, on the coasts.

The conception was a grand one, and connects Lord Bacon with our annals; but no results, such as were anticipated, followed. Yet, I suppose that Whitbourne, of whom we shall have occasion to speak

\* Francis Bacon, Baron of Veralum, one of the most remarkable of men, was born in London, in 1561. He was created Lord High Chancellor of England in 1619, and died in 1626.



particularly, alludes to this colony when he says, "Divers worshipfull citizens of the city of Bristol have undertaken to plant a large circuit, and they have maintained a colony of his Majestie's subjects there any time these five yeares, who have builded there faire houses, and done many other good services; who live there very pleasantly; and they are well pleased to entertaine, upon fit conditions, such as will be adventurers with them." Whitbourne also mentions by name in the same paper, which I conclude was written in 1621, the "Worshipfull John Slany, of London, merchant, who is one of the undertakers of the Newfoundland plantation, and is treasurer unto the patentees of that society, who have maintained a colony of his Majestie's subjects there above twelve years;" but I find no other account of Slany or his associates. It appears, too, that another company, having obtained a grant of land at Newfoundland, sent out a party who wintered there in 1613; but soon becoming weary of their attempts for settlement, they transferred their grant to other adventurers. Among the obstacles to colonization at this period, piracy is not to be overlooked. Whitbourne frequently suffered at the hands of freebooters, and in 1612 Peter Easton, a noted pirate, with ten well-appointed ships, made himself complete master of the seas, levied a general contribution on the vessels employed in fishing and impressed from those at Concepcion Bay one hundred men for his own fleet. Pirates continued to harass and plunder the fishermen for several years.

In 1613 we notice the birth of the first child of European parents. Two years later, Richard Whitbourne, already mentioned, who had made many voyages to Newfoundland, arrived at that island with a commission from the admiralty to empannel juries and correct abuses and disorders among the fishermen on the coast. He summoned a court, and heard the complaints of one hundred and seventy masters of English vessels. The abuses seem to have been flagrant. The captains had been accustomed to leave their boats and salt on the coast, hoping to find them at the beginning of the next season, but in many cases not a vestige remained of either. The bait prepared for the next day's fishing was frequently stolen out of the nets; the forests were often wantonly set fire to; the large stones used in pressing the fish were sunk at the mouth of the harbors; and little or no regard was paid to the Sabbath. Whitbourne's courts and juries were the first, probably, under the authority of England, in the New World.

Many thousand persons were employed as catchers and curers, and the fishery was in a flourishing condition. Besides the vessels of foreign flags we found "then on that coast," says he, "of your Majestie's subjects, two hundred and fifty sail of ships, great and small."\* In the paper from which I have cited he speaks of a settlement of the "Worshipfull William Vaughan, of Tawacod, in the county of Carmarthen, doctor of the civil law," who had "undertaken to plant a circuit in the Newfoundland," and who "in two severall

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\* Richard Mather, who came over to Massachusetts in 1635, kept a journal of the voyage. When on the Bank of Newfoundland, "on the end of it nearer to New England," he records seeing "mighty fishes rolling and tumbling in the waters, twice as long and big as an ox." He saw, too, "mighty whales spewing up water in the air, like the smoke of a chimney, and making the sea about them white and hoary, as is said in Job: of such incredible bigness that I will never wonder that the body of Jonas could be in the belly of a whale."

years had sent thither divers men and women;" and he adds, that "there are many other worthy persons, adventurers in the said plantations, whose names are not herein mentioned;" concluding with an appeal to his countrymen to sustain the colonies of which he had given an account, because of the "great increase of shipping and mariners, and the employment and enriching of many thousands of poore people which now live chargeable to the parishioners," and for other reasons.

Leaving here the Newfoundland fishery, for the present, we turn to adventures on the coast of New England. The Englishman who made the first *direct* voyage across the Atlantic was Bartholomew Gosnold, who explored our shores in 1602, and, catching codfish near the southern cape of Massachusetts, gave the name which it still bears. He was followed by the celebrated John Smith in 1614, who took "forty thousand" fish, which he dried, and "seven thousand" which he "corned," or pickled, in the waters of Maine, and purchased a large quantity of furs of the natives. The profits of his voyage were upwards of seven thousand dollars.

Four ships from London and four from Plymouth came in 1616. They obtained full fares, and sold their fish in Spain and the Canary Islands at high prices. The number increased rapidly. At the time the Pilgrims landed at Plymouth the island of Monhegan, in Maine, had become a noted fishing station. In 1622 no less than thirty-five ships from London and the west counties of England made profitable voyages to our shores. "Where in Newfoundland," says Smith, a common fisherman "shared six or seven pounds," in New England he "shared fourteen pounds." This was a great difference; and it is to be remembered that the profit of the merchant who furnished the vessel and the outfit was increased in the same proportion. I may add that it is of interest to learn from this remark of Smith, and from others that occur in his pamphlets, that the practice of fitting out vessels "on shares"—to use a term well known among practical men, still so common—was introduced more than two centuries ago.

Abuses far greater than those which had required the correcting hand of Whitbourne at Newfoundland soon demanded attention. Sir Ferdinando Gorges and the quaint Hubbard both declare that the fishermen and others taught the Indians "drunkenness, wickedness, and lewdness;" that they "abused the Indian women openly," and were guilty of "other beastly demeanors," to the "overthrow of our trade and the dishonor of the government." To put an end to these disorders, and to accomplish other purposes, Sir Ferdinando Gorges's son Robert was commissioned, in 1623, to come to New England as lieutenant general over all the country known by that name. Francis West, bearing the commission of admiral of the seas, with power to restrain such ships as came either to fish or trade on the coast without license, arrived the same year. Neither were officers of the crown, but the agents of a private corporation.

King James had granted, three years previously, to forty noblemen, knights, and gentlemen, the vast domain embraced between the 40th and 48th degrees of north latitude, and extending from ocean to ocean. This company, known in popular language as the "Council of Plymouth," claimed not only the territory within their patent, but the seas. Assuming that the fishing-grounds from Acadia to the Delaware were no longer free to British subjects, they asserted exclusive



property in and control over them, and were sustained in their pretensions by the King.

The controversy which followed the attempt of the council to maintain this monstrous claim was fierce and angry in the extreme. The limits of this report will allow but a brief account of it. It commenced in 1621, two years before the voyage of West, and was continued for several years.

Sir Ferdinando Gorges's narrative of the troubles of the council from this source and others is preserved in the Collections of the Massachusetts Historical Society, and contains many interesting statements. He had been an officer in Queen Elizabeth's navy, and intimately connected with Mason, who became the grantee of New Hampshire, and, with Sir Walter Raleigh, the father of American colonization, and was as determined as either of them to leave his name in our annals. He was an active, indeed the principal, member of the council, and after its dissolution, acquired Maine in his own individual right.

The council demanded that every fishing vessel should pay into their treasury a sum equal to about eighty-three cents the ton, which, the small size of the vessels of the period considered, amounted to a tribute probably of more than a hundred dollars from each English ship that should come upon our coast. They had made no settlements upon the land, and the tonnage money to be exacted of the fishermen constituted the only present source of revenue from their possessions.

The spirit of the English people was roused. The Dutch herring-fishery was regarded as the "right arm of Holland," and the imaginations of Englishmen were filled with dreams of the fortunes which were certain to be secured from a kindred pursuit in regions where Dutch *busses* had not adventured; and the prodigal act of the King in granting to favorites of his court the seas which contained the treasures they coveted, caused the most indignant complaints. The House of Commons, obedient to the popular feeling, insisted upon the abrogation of the obnoxious monopoly, and that every Englishman should be allowed to fish at will, without molestation or tribute, within the limits of the council's patent. During the debate which arose, (a sketch of which may be found in Bancroft) the patentees were assailed with great boldness. "What," said Sir Edwin Sandys, "shall the English be debarred from the freedom of the fisheries—a privilege which the French and Dutch enjoy? It costs the kingdom nothing but labor; employs shipping; and furnishes the means of a lucrative commerce with Spain." "Nay," replied Calvert, "the fishermen hinder the plantations; they choke the harbors with their ballast, and waste the forests by improvident use. America is not annexed to the realm; you have, therefore, no right to interfere."

The friends of "*free fishing*" prevailed in the Commons; but Parliament was dissolved before a bill embracing and legalizing the fruits of the triumph could be carried through the forms of legislation. The council, giving no heed to the clamors of the people, and disregarding the course of the Commons, sent over West, as we have stated. To enforce the payment of the tribute, and to drive off and break up the voyages of those who refused, were the principal objects of his mission. He found the fishermen too numerous and too stubborn; and, accomplishing nothing, departed for Virginia, and thence returned to England. His proceedings and the unyielding disposition manifested by

Gorges and other members of the council, caused a renewal of the clamor, and of the demand that the American fishing ground should be declared free and open to all the subjects of the realm.

On the meeting of Parliament in 1624, the pretensions of the council were again assailed with eloquence and power. Sir Edward Coke,\* Speaker of the Commons, one of the most eminent of English lawyers, and now in his old age, indignantly demanded the revocation of the odious restriction. Sir Ferdinando Gorges had been summoned and was present. "Your patent,"—thus was Gorges addressed by Coke from the Speaker's chair—"Your patent contains many particulars contrary to the laws and privileges of the subject; it is a monopoly, and the ends of private gain are concealed under color of planting a colony." "Shall none," he said in debate, "shall none visit the sea-coast for fishing? This is to make a monopoly upon the seas, which wont to be free. If you alone are to pack and dry fish, you attempt a monopoly of the wind and sun."

The Commons prevailed a second time, but the bill to revoke the charter did not receive the royal assent. Still, the council were forever entirely powerless. Though protected by their sovereign, public sentiment compelled submission; and abandoning their own plans, they continued to exist as a corporation, merely to make grants of lands to other companies, and to individual members of their own number.

James bequeathed the quarrel to his son. The ill-fated Charles had hardly ascended the throne before the Commons passed a bill for the maintenance and increase of shipping and navigation, and for the liberty of fishing on the coasts of Newfoundland, Virginia, and New England. This bill was lost in the House of Lords, but the spirit of the Commons was not repressed. In a strong representation of grievances, which they laid before Charles, they insisted that the restraint of the subject in the matter of fishing, with all the necessary incidents, was of national concern and required redress.

This State paper, and their refusal to grant the King a subsidy, caused the dissolution of Parliament.

It is from this dissolution that we date the disagreements between Charles and his people, which, in their termination, overturned a dynasty and carried the monarch to the block. In truth, I am led to conclude that the question of "free fishing" was the first in the series of disputes relative to the prerogatives of the crown on the one side, and the rights of the subject on the other.

The political consequences of the discussions so briefly considered, might well claim further attention; but leaving them here, the results to the fisheries next demand our notice. These, for the moment, were disastrous in the extreme, since I know of no other explanation to the fact, that during the five years embraced in the struggle the number of English fishing-vessels on the whole extent of our coast diminished much more than one-half, or from four hundred to one hundred and fifty; while it is certain that in the alarm which pre-

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\* He was born in 1550; he became solicitor general in 1592, and attorney general soon after. His conduct in the latter capacity, during the trials of the Earl of Essex, and the celebrated Sir Walter Raleigh, has been severely and justly condemned. Coke, in 1613, was appointed chief justice of the Court of King's Bench. Towards the close of his life, he devoted himself to the cause of the subject, in opposition to the pretensions of the crown; he died in 1634.



ailed, the merchants who had purchased the island of Monhegan, and had provided there ample accommodations for the prosecution of their adventures, sold their property and retired from the business.

Singular to remark, too, that on the immediate coast of New England—and for ships owned or entirely controlled by English merchants—the right of “free fishing,” so earnestly contended for, was of little real value. Accounts of such ships terminate almost at the very moment that the right was established, in the manner related.\* In another part of this report, we shall indeed find that single vessels continued to arrive at, and depart from, particular fishing stations; but these instances do not change the general truth, for most of them were connected with establishments occupied by persons who came to settle and remain in the country. We may conjecture that these merchants withdrew, because, once interrupted, they would not adventure again; or because they were satisfied that, in the long run, the Newfoundland fishery would prove the safest and most profitable; or because some of them became interested with their countrymen, who, meantime, had founded the colonies of Plymouth, New Hampshire, and Maine, who had set up fishing-stages at Cape Ann, and were about to undertake the colonization of Massachusetts on an extensive plan.

The disasters, at most, were limited and partial. The benefits were general, and of vast consequence. Had the council succeeded in their measures the whole course of affairs would have been arrested, and the settlement of the country postponed indefinitely. Before the dissolution of the corporation, eight patents of soil and fisheries were granted in Maine; and the long, expensive, and vexatious quarrels which arose there between rival patentees, and the claimants under them, prove conclusively that, had the seas and territory of all New England been lotted and parcelled out in the same way, our history, for an entire century, would have contained little else than accounts of strifes, commotions, and forcible possessions and ejections.

Several of the patents issued by the council previous to 1626 convey, either by implication or in express terms, to the patentees, the exclusive right of fishing within their domains; and in their eighth and last, to Aldworth and Elbridge, two merchants of Bristol, England, dated in 1631, and known in Maine as the “Pemaquid patent,” this pro-

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\* Governor Bradford, in a letter to the “Council of New England,” dated at Plymouth, June 15, 1627, complains that the English fishermen on the coast “began to leave fishing and to fall wholly to trading, to the great detriment of” the settlers there, and the “state of England.” In the year following, complaint was made to the council against Thomas Morton, who “had been often admonished not to trade or truck with the Indians,” and against “the fishing ships, who made it too ordinary a practice” to do the same thing, and over whom the people of Plymouth had no control.

In a communication to Sir Ferdinando Gorges, the same year, (1628,) it is said that Englishmen, under “pretence of fishing,” sold the natives all manner of arms; that “from the greedy covetousness of the fishermen, and their evil example, the like had began to grow amongst some, who pretend themselves to be planters, though indeed they intend nothing less but to take opportunity of the time, and provide themselves and begone, and leave others to quench the fire which they have kindled,” &c., &c.

The evil seems to have been alarming, since it is further said, that unless the colonists were protected against these misdeeds, they must “quit the country.” The assistance of Gorges, to bring Morton “to answer those whom it may concern,” and “likewise that such fishermen may be called to account,” is earnestly entreated.

vision is retained. But grants to individuals to monopolize our seas disappear ever afterward.

In the charter to Calvert, of Maryland, the freedom of the fisheries is expressly stipulated. So, too, in the grant to Gorges, the great champion of monopoly, any subject could fish in Maine, and use the shores for purposes of curing and drying.

The patent to Sir Henry Roswell and others, of Massachusetts, defines with almost tedious particularity the rights to be enjoyed by all the inhabitants of the realm in any of the seas, arms of the sea, and salt-water rivers, as well as those of drying, keeping, and packing fish on the lands appurtenant.

In like manner the charter of Rhode Island, granted by Charles the Second, expresses the loyal will and pleasure to be that "our loving subjects, and every one of them," shall "exercise the trade of fishing" where "they had been accustomed to fish." Even after the expulsion of the Stuarts, and in the second charter of Massachusetts, in the reign of William and Mary, when our fishing grounds had been open more than sixty years, the principles asserted by Coke in the House of Commons are as carefully recognised and repeated as he himself could have desired. In these, and in similar instruments, then, and not in the statistics of vessels and men at a particular time, we are to seek for the fruits of the victory obtained by the sturdy advocates of "free fishing, with all its incidents," in America.

We may now pause a moment to discuss a kindred topic, which changes the scene from our seas to those of the mother country. I refer to the "ship-money," levied by Charles the First, and to Hampden, who won undying fame by resisting its payment. Both are more intimately connected with our general subject than seems to be commonly supposed.

First, it cannot but have been remarked that the acts of Parliament to "increase shipping," by encouragement to the different English fisheries, are numerous throughout the period embraced in our inquiries. The end desired was obtained; and I regard it as historically accurate to say that the earliest considerable demand for English ships of proper size and strength to perform long and perilous voyages was for explorations and fishing upon our coasts. At all events, it is certain that down to the time of Elizabeth the foreign trade of England was in the control of German merchants, and that there had been no employment for many or for large ships of the realm.\* British navigation increased with the growth of the fisheries. Without the fleets maintained at Iceland and Newfoundland there would have been neither ships nor seamen to execute the plans for the colonization of New England, and of other parts of the continent, during the reigns of James and Charles.

Yet, while the commercial marine gained strength, the royal navy continued small, and at the accession of James it consisted of but thirteen vessels.

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\* In 1485 (reign of Henry VIII) Sir William Cecil, a London merchant, stated that there were not above four merchant vessels, exceeding one hundred and twenty tons burden, belonging to that city; and that "there was not a port in Europe, having the occupying that London had, that was so slenderly provided with ships." Other writers assert that at the death of Queen Elizabeth (1603), more than a century later, there were only four merchant ships in all England of more than four hundred tons.



Charles succeeded to a naval force far too weak to cope with the fleets of his enemies; and after his breach with the Commons, resorted to the fatal levies of "ship-money" to augment it, and for a distinct object, namely, that of breaking up the Dutch fisheries on the British coast. The dispute was of long standing. Complaints against the aggressions of the industrious Hollanders had been made to Elizabeth, and to her successor. It was said, indeed, in the time of the latter, that the Dutch not only engrossed the fisheries, but the entire maritime business of the country; and James compelled them to pay an annual tribute for the liberty of catching herring on the coasts of his kingdom. New disagreements arose, when they were warned off by royal proclamation. The Dutch were exasperated. Hugo Grotius appeared in their defence; and in his *Mare Liberum* contended for the freedom of the seas. Selden, in his *Mare Clausum*, is supposed by British writers to have refuted his arguments, and to have shown by records the first occupancy of the fishing grounds by the English, and their dominion over the four seas which surround the British isles, to the utter exclusion of both Dutch and French; as well as the fact that the Kings of England, even without the authority of Parliament, had levied large sums to maintain the sovereignty of the seas.

The Dutch, denying these conclusions, and insisting that the dominion claimed by the English extended no further than the friths, bays, and shores, still continued their employment in the interdicted waters. The English required an acknowledgment of their title, and a tribute. Negotiations to adjust the difficulties between the two nations failed. Meantime, Charles, by his exactions of "ship-money," annually increased his navy.\* At last he was able to fit out a fleet of sixty sail, and the greatest ever equipped in England. This formidable armament, created for the special purpose of driving the Dutch herring fishers from the four "narrow seas," as they were called, was sent immediately to perform that service; and in the success of the enterprise, the Dutch consented to pay a sum equal to about one hundred and fifty thousand dollars.

Such, I think, are the conclusions to be derived fairly from the statements of Hume, and other writers of English history. Dr. Johnson, refusing to allow any influence to the religious antipathies that were awakened in the course of the controversy between the monarch and his people, sums up the case far more forcibly, and evidently considers that Charles owed his ruin to his zeal in maintaining the monopoly of the seas. In his "Introduction to the Political State of Great Britain," written in 1756, he says: "The Dutch, grown wealthy and strong, claimed the right of fishing in the British seas; this claim the King, who saw the increasing power of the States of Holland, resolved to contest. But, for this end it was necessary to build a fleet, and a fleet could not be built without expense: he was advised to levy ship-money, which gave occasion to the civil war, of which the events are too well known." Thus it appears that the exercise of the prerogative to exclude his *subjects* from the fishing grounds of his dominions in one hemisphere was among the *first*; and

\* It was said by the merchants of England in 1627, that "within three years they had lost all their shipping; that the *fishermen* were taken almost in their very harbors, and that they would not attempt the building of new ships, because, as soon as they were ready, the King [Charles the First] seized them for his own use, against the will of the owners," &c.

that the imposition of taxes, without authority of Parliament, to forcibly exclude a *foreign people* from those in the other, was among the *last* of the offences that sealed the fate of the unhappy Charles.

We return to the English fishery at Newfoundland. The first incident that invites our attention is the attempt of Sir George Calvert to found a colony. Whitbourne says that he undertook "to plant a large circuit," and that in 1621 he had already sent "a great number of men and women, with all necessary provisions for them," who were building houses, clearing land, and preparing "to make salt for the preserving of fish another yeare." His grant was for a considerable tract, embracing the coast from Cape St. Mary to the Bay of Bulls. He called his plantation "Avalon." His expenditures were very large for the time, amounting to nearly one hundred and twenty-five thousand dollars. Sir George resided in person at "Avalon" for some time, it is said, and endeavored to succeed where others had failed. But the difficulties he encountered were numerous. His rights became impaired by the determined course of the Commons in asserting the freedom of the fisheries; and the soil and climate did not meet his expectations.

More than all, the French menaced the destruction of his property, and required the manning of ships, at his own expense, to protect his private interests, and the defenceless English fishermen on the coast. Relinquishing, finally, his plantation at Newfoundland, he turned his thoughts to more hospitable regions, and, as Lord Baltimore, became the father of Maryland.

Of all who sought our shores to acquire power and princely estates, to escape persecution, or to give a home and shelter to the weary and stricken, not one—whether Puritan, Episcopalian, or Quaker—was actuated by a spirit more liberal, or has left a better name, than George Calvert, the Catholic.\*

Remarking that Winthrop records in his journal (1647) the occurrence of a hurricane at Newfoundland, which wrecked many ships and boats, and destroyed quantities of fish, we come to the time of Charles the Second. That monarch, after the restoration, in 1660, issued a long-proclamation for the strict observance of Lent, assigning, as one reason therefor, "the good it produces in the employment of fishermen." Still further to encourage this branch of industry, Parliament passed an act the same year remitting the duty on salt used in curing fish, and exempting the materials required in the fisheries from customs and excise. Three years later, the Newfoundland fishery was specially protected by an entire exemption from levies and duties; and the home and colonial fisheries were at the same time assisted by duties imposed on products of the sea, imported by foreigners or aliens.

Yet, the number of ships employed at Newfoundland declined annually. In 1670, the merchants sent out barely eighty. The decline

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\* George Calvert, Baron of Baltimore, and founder of Maryland, was born in England in 1582. He was appointed one of the principal secretaries of state in 1619; and while holding office he acquired the southeastern peninsula of Newfoundland, which he erected into a province called Avalon. In 1624 he became a Catholic. After his abandonment of Newfoundland he made a visit to Virginia, but the colonists disliked his religion, and he relinquished his intention to settle among them. On his return to England, Charles the First gave him a patent of the country now Maryland. Lord Baltimore died in London in 1632, before his patent had passed the necessary forms; and a new one was issued to his son Cecil, who succeeded to his honors.



was attributed to the boat fishery, carried on by the inhabitants there. Sir Josiah Child,\* the leading authority of the day in matters of trade and commerce, sounded the note of alarm, anticipating that, if the resident fishermen continued to increase, they would, in the end, carry on the whole fishery, and that the nursery of British seamen would be destroyed. The only remedy he proposed was the annihilation of the boat fishery. Never was a more unjust expedient conceived. The labors, the expenditures, and sacrifices, of a large number of eminent and adventurous men, who had devoted life and fortune to the colonization of Newfoundland, were thus to be counted as worthless, and even injurious to the realm. But the views of Child were adopted by the Lords of Trade and Plantations,† who determined to break up and depopulate the colony. Sir John Berry was accordingly sent over, with orders to drive out the fishermen, and burn their dwellings. The extent of his devastations under this more than barbarous decree may not be certainly known; but six years elapsed before the mandate of destruction was revoked, and its abrogation was accompanied with instructions to allow of no further emigrations from England to the doomed island. Complaints were made that emigration continued, and various plans were suggested to discourage and prevent it. Meantime, the relations between the resident fishermen and the masters and crews of the ships sent out by the English merchants were hostile to an extent which, at the present day, seems almost incredible. Previous to the edict just noticed, the former had petitioned the King for the establishment of some form of government, to protect them against the rapacity of their own countrymen—the latter. The merchants opposed the measure, as injurious to the fisheries, and prevailed. The petition of the residents was renewed from time to time, but never with success; and they continued to suffer wrongs and cruelties without redress.

The merchants convinced the ministry, or the Lords of Trade and Plantations, that the appointment of a governor, and the recognition of the full rights of the inhabitants of Newfoundland as British subjects, would produce the ruinous results anticipated by Child, and, strange as it may appear, no Englishman could lawfully have a home on that island for a long period.

The edict of 1670, to burn and destroy, had the effect, possibly, to increase the number of ships, since, four years afterward, two hundred and seventy, employing, on board and on shore, ten thousand

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\* Sir Josiah Child was a merchant. It is said that he acquired great wealth in the "management" of the East India Company's stock. When his daughter married the eldest son of the Duke of Beaufort, he gave her a portion of £50,000. Sir Josiah had fish-ponds in Epping forest, "many miles in circuit."

† The Board of Trade and Plantations was of no service to the American colonies, though created for the special purpose of attending to their interests. Mr. Burke, in a speech in the House of Commons, in 1780, thus spoke of it: "This board is a sort of temperate bed of influence—a sort of gently-ripening hot-house—where eight members of Parliament receive salaries of a thousand a year, for a certain given time, in order to mature, at a proper season, a claim to two thousand, granted for doing less, and on the credit of having toiled so long in that inferior laborious department. I have known that board, off and on, for a great number of years. Both of its pretended objects have been much the objects of my study, if I have a right to call any pursuits of mine by so respectable a name. I can assure the House—and I hope that they will not think that I risk my little credit lightly—that, without meaning to convey the least reflection upon any one of its members, past or present, it is a board which, if not mischievous, is of no use at all."

eight hundred men, were engaged in the fishery. Yet the seas were not safe. Some of the fishing vessels mounted from ten to twenty guns, and carried from sixty to one hundred men, and others sailed under convoy, and were protected, while on the coast, by ships-of-war. The price of fish, to support this state of things, must have been enormous.

As the century closes we notice the mention of a report of the Lords of Trade and Plantations, in which they so far modify their former order, relative to emigration, as to intimate that, inasmuch as a thousand persons might be useful at Newfoundland, to construct boats and fishing-stages, that number would be suffered to live there, without fear, we may conclude, of official incendiaries and legal robbers. But the gracious privilege thus accorded still placed the resident fishermen at the tender mercies of the merchants and the masters of their vessels; for, by an act of Parliament in 1698, these masters, in the absence of all law, were authorized to administer justice, and to regulate the general concerns of the fisheries and of the colony, almost at pleasure.

Were the inmates of British prisons to be subjected now to the treatment received by the inhabitants at the hands of these masters, the whole civilized world would join in a shout of indignant condemnation. The first master who arrived at any particular harbor was its admiral for the season; the second was its vice-admiral, and the third its rear-admiral. Thus, at the outset, no attention whatever was paid to the qualifications—to the heads or the hearts—of these strange rulers. Accident—a long passage or a short one, a dull or a quick-sailing vessel—determined everything. The triumph of the English merchants over their fellow-subjects, in this lone and desolate isle, was as complete as that of the warrior who storms a city. In fine, the “admirals” selected the best fishing stations, displaced at will the resident fishermen who occupied them, drove the inhabitants from their own houses, took hush-money and presents of fish in adjusting cases brought before them for adjudication, and, in their general course, were as arbitrary and as corrupt as the leaders of banditti. There were exceptions, it may be admitted; but the accounts are uniform that, as a class, the “admirals” were both knaves and tyrants. Yet the law which authorized these iniquities bore the title of “An act to encourage the trade of Newfoundland.”

In 1701 we have a very particular and detailed return of the condition of the fishery, thus: There were 121 vessels, manned with 2,727 men, 993 boats, belonging to the vessels and to the resident fishermen, 544 fishing-stages on the shores, and 3,581 men, women, and children employed as curers; while the catch was 216,320 quintals of fish, yielding 3,798 hogsheds of oil.\*

In 1729 we record an improvement in the government of the island, since a captain of a ship-of-war displaced the “admirals,” and we find the number of inhabitants estimated at about 6,000. Referring to the accompanying table for the general statistics of the century; and remarking that the number of ships was doubled in the six

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\* In 1727 an act of Parliament was passed which authorized the importation of salt into Pennsylvania, in British ships, (navigated according to the navigation acts of the realm,) and for the curing of fish, on the same conditions as were allowed in New England and Newfoundland.



years succeeding the close of the war with France, which immediately preceded our Revolution, we proceed to notice such events as our limited space will allow:

The first of these is the proclamation of the King, in 1763, in which it is stated that, "to the end that the open and free fishery of our subjects may be extended to and carried on upon the coast of Labrador and the adjacent islands, we have thought fit, with the advice of our privy council, to put all that coast, from the river St. John to Hudson's straits, together with the islands of Anticosti and Madalene, and all other islands lying upon the said coast, under the care and inspection of our governor of Newfoundland," while "the islands of St. John, Cape Breton, or Isle Royale, with the lesser islands adjacent thereto," were annexed to "the government of Nova Scotia."

The general affairs of Newfoundland were considered at about the same time. Though no plan was devised for the government of the colony, such as was due by England to herself and to humanity, the resolution was still adopted to discontinue all further attempts to check the resident fishermen. The task had become, indeed, hopeless. The tonnage of the merchants' ships had fallen to less than eighteen thousand, and their catch to one hundred and thirty-six thousand quintals. The produce of the boat fishery, on the other hand, had risen to three hundred and ten thousand quintals. The boat-fishers, or inhabitants, had, therefore, overcome every obstacle, and were in the ascendancy.

I reserve a full answer to the many complaints against our countrymen who fish in the seas of British America, for another part of this report; that, however, which is made by the people of Newfoundland, may be disposed of here.

The charge is, that the British flag is no longer seen upon "the banks," and that the privileges enjoyed by the French and Americans, by treaty and otherwise, have caused the withdrawal of the English and colonial merchants from that branch of the fishery. This charge is to be found, in substance, in an offensive form, in newspapers, in official documents, and remonstrances to the home government. I submit, in all kindness, that it is not so. The truth is, that the resident fishermen—as Sir Josiah Child, a hundred and eighty years ago, anticipated they would do—have supplanted the merchants of England, with whom they so long contended; that the boat fishery has taken the place of the vessel fishery, in the common course of things. To catch fish by long, expensive, and perilous voyages, when they can be taken at the fishermen's own doors, where catchers and curers can sleep in their own beds, taste the sweets of a shore life, and enjoy the comforts of home, is to dispense with the steam-spindle and go back to the distaff. There is no truth in the complaint. The annual catch at Newfoundland, in whole numbers, is one million of quintals, and, on a mean of years, equal to that of any former period. This fact is conclusive. That the Americans disturb the industry of the colonists, is not possible. The restoration of the by-gone vessel fishery can be accomplished, not by driving these "foreigners" from "the banks," but by a *new edict to burn and destroy the dwellings of British subjects.\**

In 1771, the number of souls at Newfoundland was 3,449 English, and 3,348 Irish. In 1775, merchants "at home" were encouraged to

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\* Lord Dundonald expressed his views with regard to the British fishery at Newfoundland in a communication published in the London Times, August, 1852, in the

continue their adventures, by an act of Parliament, which allowed a bounty of £40 to the first twenty-five ships, £20 to the next hundred, and £10 to the second hundred, that should make fares of fish before the middle of July, and proceed to "the banks" for a second lading.

Lord North's bill to prohibit the people of New England from fishing at Newfoundland, which was passed in the year last named, will be noticed particularly elsewhere.

During the discussion pending these measures—the one to "encourage," the other to "starve" subjects of the realm—Martineaux Shulldham, who had been governor of Newfoundland three years, was examined at the bar of the Commons. The material part of his testimony may be thus stated: that the catch of fish in 1774 was

following terms. It will be seen that he attributes the suspension of the *vessel* fishery to the bounty system of France and the United States; and that he considers the employment of a naval force to prevent "aggressions," a mistaken policy.

To the Editor of the Times.

SIR: The leading article of the Times of the 3d inst., on the subject of the British North American fisheries, involves a maritime question of such vital importance to the permanence of our naval power, that I hope you will devote the corner of a column of your paper (perused and pondered over by civilians and statesmen) to convey, in as few words as possible, the real cause of the progressive decay, and now total abandonment, of that once important nursery for seamen, with which the duties of my late naval command required that I should make myself intimately acquainted.

The result of authentic information derived from official documents, most of which were obligingly furnished by the zealous and indefatigable governor then presiding in Newfoundland, (Sir G. LeMerchant,) proved that the British "bank" or deep-sea fishery formerly employed 400 sail of square-rigged vessels and 12,000 seamen, and that now not one of these follow their vocation in consequence of the ruinous effect of bounties awarded by the French and North American governments. The former pay their fishery 10*l.* for every quintal of fish debarked in the port of France, and 5*l.* additional on their exportation in French vessels to foreign States, once exclusively supplied by England—a transfer which cannot be viewed simply as a mercantile transaction, seeing that the substitution of a greater number of foreign transatlantic fishing vessels, having more numerous crews, constitutes a statistical difference amounting to 26,000 sailors against England, without including the United States—a fact that ought not, and, being known, cannot be looked on with indifference.

Transatlantic steam-packets receive national support, amounting to hundreds of thousands of pounds a year, without complaint being made even by the most zealous free-trade advocate, because such vessels may prove useful in war. How, then, can the policy of granting a premium, thus forced upon us, in order to preserve our nursery for seamen, be considered otherwise than the cheapest means of manning our ships-of-war? Such premium, for the deep-sea fishery vessels resorting to Europe, ought to be accompanied by immunity to our in-shore colonial fishermen from the tax on foot, (from which the parent State is happily free,) and by a release from other imposts, from which the French fisherman, under naval authority, is wholly exempt.

Brevity being essential to admittance into your columns, reference may be made for important details to "Morris's Fishery of Newfoundland," containing petitions and remonstrance of inhabitants, which assuredly have never been read by our colonial administration, though pressingly urged for consideration.

Vessels-of-war are obviously not required for the protection of the deep-sea fishery which has ceased to exist; nor are they necessary for the security of the undisturbed colonial punts which fish in-shore. The stationing more vessels-of-war to guard the fishery is therefore a mistake, originating in a want of knowledge of facts. Fish caught by the British subjects cannot be sold with profit either in continental Europe or in the United States. In 1849, the duty paid on British fish in the ports of the United States was \$163,000, while the premium awarded to their own fishermen was \$243,432.

Those who desire further insight into the circumstances of our western colonies, especially as regards the fisheries of Newfoundland, may consult a pamphlet published by Ridgway, containing a statistical map, which ought to be brought to the knowledge of those who possess the power to avert impending national mischiefs.

I am, sir, your often obliged and obedient servant,

DUNDONALD.

LONDON, August 4.



739,877 quintals, and that 23,652 men were employed in the fishery, all of whom became sailors.

With regard to the fishermen of New England, he said that few of them ever entered the British navy; that he had heard great complaints of the outrages they committed on the coast; that they carried on an illicit trade with the French, meeting them on the sea and selling them not only provisions and lumber, but vessels also; and that, in the French war, few of them had served in his Majesty's ships-of-war.

At the peace of 1783, the English Newfoundland fishery—interrupted by hostilities—was resumed with spirit, and prosecuted with success; and three years after, the bounty act of 1775 was renewed for a specified term. The condition of the colonists remained, however, without material change. I find it stated that a gentleman formerly connected with Lord North's administration said, in the course of his testimony before a committee of the Commons, that *"the island of Newfoundland had been considered, in all former times, as a great English ship, moored near the Banks during the fishing season, for the convenience of English fishermen;"* that *"the governor was considered the ship's captain, and all those concerned in the fishing business as his crew, and subject to naval discipline."*

This quaint witness spoke in 1793. The same year, another functionary, in his testimony before the same committee, declared that he would *"allow no woman to land on the island, and that means should be adopted to remove those"* already there. Thus do we conclude the eighteenth century; barely adding, that the influence of the merchants was yet sufficient to prevent grants of lands, and that the colonists raised a few garden vegetables for consumption only by violations of State papers and the statute-book.

For the twenty years preceding 1815, the fishery was prosperous beyond example. The profits to merchants engaged in it were sometimes fifty, sixty, eighty, and even one hundred thousand dollars in a single season. Persons who commenced the business entirely destitute of capital, shared in these enormous gains, and accumulated large fortunes in a short period. It would seem, however, that, as previously, the advantages to the permanent residents were inconsiderable, since the fishery was in the hands of English merchants, whose adventures were conducted by agents, and of those who, on amassing wealth, immediately departed from the island. A sudden and disastrous reverse occurred.

The quantity of fish exported in 1814 was about *one million two hundred thousand quintals, of the value of more than twelve millions of dollars.* The quantity shipped in 1815 was hardly less; but the peace produced a ruinous change in price. The decline from eight and nine dollars the quintal, to five, four, and even to less than three dollars, was rapid. Almost universal bankruptcy followed; for two or three years entire suspension of the fishery was the result apprehended. For awhile, the few merchants who escaped insolvency, utterly hopeless in the general dismay, were bent upon closing their affairs. The common fishermen, in the years of prosperity, had intrusted their savings to their employers, and the distress of this class would have been diminished could these have been recovered; but, losers by the failure of the merchants to an amount exceeding one million of dollars, and destitute alike of money and of employ-

ment, their condition was extremely sad, and excited deep sympathy. Thousands of persons depended solely upon the hook and line for subsistence, and emigration or starvation were considered the only alternatives.

The colonists, who rely upon the products of the sea for support, charge the most of their misfortunes to their French and American competitors. They did so in the case before us. Their complaints were groundless, and may be dismissed in perfect good nature. The people who distress them so continually, and whose appearance on their fishing grounds spreads so general consternation, were fellow-sufferers from the ruinous decline of prices of commodities at the general pacification of Europe, and were involved in similar bankruptcies. Besides, at the period of commercial disasters at Newfoundland, the French and Americans had not recovered from the effects of war, and had not, to a very alarming extent, resumed their adventures upon the coasts or "the banks" of that island.

The competition between the colonists and the people just mentioned increased; but the English fishery gradually revived. The annual catch is now nearly a million of quintals. There have been seasons of fluctuations since the years referred to: depression is an incident in every human employment. Maritime pursuits are more uncertain than those of the soil or those of the work-shop. Of the fisheries, particularly, it is entirely true to say that they never have afforded, and never will afford, constant and continuous rewards; for, aside from the losses consequent upon overstocked and glutted markets, the most unwearied industry and the highest degree of skill are often insufficient to insure good fares. Our colonial neighbors should take these matters into the account, and while lamenting their calamities, remember that the American fishermen, whose condition they consider so much preferable to their own, are subject to the same reverses, and would gladly surrender many of the privileges they are supposed to enjoy, for the liberty of living near to, and of freely using, the inner or shore fishing grounds, of which they are now deprived, and which are reserved exclusively for British subjects.

As a branch of industry, we need pursue our inquiries relative to the Newfoundland cod-fishery no further. The table of statistics, compiled from the best sources of information open to me, and which I think is substantially accurate, may be referred to as affording a general view of the subject for the last thirty years. The exports are to Portugal, Italy, Spain, Brazil, the British West Indies, the British continental possessions in America, to Great Britain, Ireland, and Scotland. In some of these markets the merchants of Newfoundland have no competitors. As much as they complain of us and of our policy, our ports are open to the importation of their staple commodity, on terms which are producing alarming changes in the property and prospects of those of our countrymen whose position on the coast of New England, and whose habits and general circumstances, leave them no choice of employments.

Newfoundland is connected with some of the most interesting events to be found in our annals. Cabot saw it before Columbus set foot on the American continent. There came the first men of the Saxon race, under the first English charter, to found an English colony. Visitors to, or residents upon its shores, were the noble Gilbert, and Raleigh, the father of colonization in this hemisphere; Mason and Calvert, the



founders of two of the United States. Among those who lent aid and countenance to the enterprises to people it, in early time, were persons of rank and wealth—and Bacon, of world-wide fame. In its waters were the first trials by jury in America. The freedom of its fisheries was asserted by Coke, and other champions of English liberty, in tones to rouse the popular mind, and to put an end to chartered monopolists.

In some respects Newfoundland is "a great English ship moored near the Banks," even in the second half of the nineteenth century. Twenty years have not elapsed since the system, which was hardly a modification of that devised by heathen Carthage and Rome, for the government of distant colonies, was abolished, or since captains in the royal navy, who came to the island in the spring and returned to England at the close of the fishing season, ceased to rule and to consider the inhabitants as "subject to naval discipline;" and persons are now alive who were the victims of the merchants "at home," who, armed with ordinances and instructions of the Lords of Trade and Plantations, insisted upon the entire control of the business, and of the domestic arrangements of the residents.

For the first time, in a history of more than three hundred years, a legislative body, similar to those of other British colonies, assembled in Newfoundland in 1833. The only material changes of previous dates were those which related to the administration of justice, and which allowed the people the forms and principles of jurisprudence, in place of the decrees and the decisions of the knavish and despotic "admirals" in command of fishing vessels, and the quarter-deck mandates of their successors.

A few miles back from the coast, Newfoundland is almost an unbroken wilderness. The inhabitants, as a body, are as ignorant of the interior of the island as are others. To them, and to all the world, the colony is known for its fisheries, and for these alone. To enumerate St. John, Ferryland, Fogo, and Burin, and the settlements on the bays of Concepcion, Trinity, Bonavista, Fortune, Bull's, Placentia, and St. Mary's, is to recall almost every place of note. There was no free port until 1828, and no bank until eight years later. From the discovery of Cabot to the arrival of a bishop of the church, was three hundred and forty-three years. The population in 1806—about two and a quarter centuries after the attempt of colonization by Gilbert—was less than twenty-six thousand. It was less than seventy-four thousand in 1836; and but ninety-six thousand six hundred and six in 1845.

It remains to speak of the fishing grounds; of the manner of catching and curing, and of the habits of the persons who are employed in the fishery. As the vessel or "bank" fishery has been abandoned by the English, an account of it is reserved for the third part of this report. The boats used for the shore fishery require from two to four men each. The number of boats in 1838, was 6,159; and in 1845, 9,989. The fishing is performed within the harbors, and early in the season, near the land. The men stand while at their toil, and each is able to tend more than one line. At times the fish fasten to the hooks so rapidly, that the fishermen display great activity. A boat is often filled in two or three hours. On the shores are "stages," or buildings erected on posts, and projecting into the sea, to allow boats to come to them as to wharves or piers. The fish are carried to these "stages," where, in the hands of the "cut-throat," the "header," the "splitter," and the

"salter," as four classes of the "shoresmen" are called, they are prepared for the "dryer." When sufficiently salted, they are washed, and transported on "hand-barrows" to the "flakes," where they are spread and dried. Once cured, they are piled in warehouses to await sale or orders for shipment. The "salter" and the "dryer" should be careful and expert men; the one to distribute the salt with a skilful hand—the other, that damps and rains do not injure the fish while exposed in the air. Three qualities are usually sorted for exportation, and a fourth, consisting principally of broken and discolored fish, is retained for consumption. Women and children are sometimes employed in the boats, and very frequently assist the curers on shore. During the fishing season there are no idlers of either sex.

The labors of the fishermen and shoresmen are almost incessant. The time devoted to sleep, under circumstances that often occur, is insufficient for the demands of nature; while long abstinence from food is not uncommon.

The fishermen formerly lived in the rudest of structures; but they now occupy comfortable dwellings. Their food is coarse, and their manners rough. Intoxicating drinks were once as common among them as tea or water. Of late years there has been a sensible change for the better; and a large class are moral and temperate. Their habits of life are irregular, from the necessities of their position; but in hospitality and acts of kindness they are not excelled by men of the higher walks of society. They are to be judged in mercy, for their opportunities to improve are few, and their temptations to err are many.

*English cod-fishery—Newfoundland.*

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*English herring fishery, Newfoundland.*

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THE NEWFOUNDLAND SEAL FISHERY, SO CALLED.

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FISHERIES OF NOVA SCOTIA.

The original grantee of that half fabulous, never defined country, Acadia, was Pierre de Gast Sieure de Monts, a protestant, and a gentleman of the bed-chamber of Henry the Fourth of France. In 1603, his royal master, by letters patent, gave him the territory between the 40th and 46th degrees of latitude, and in the following year De Monts came in person to explore and take possession of his domains. Sixteen years before the landing of the pilgrims at Plymouth, he wintered upon an island in the river St. Croix, which, since the adjustment of the boundary line between the United States and New Brunswick, has been considered within the limits of Maine. This island is claimed by the heirs of the late General John Brewer, of Robbinston. Relics of De Monts' sojourn upon it continue to be found.

Annapolis—the Port Royal of the French—was founded before his return, and is the oldest settlement in Nova Scotia. The "lieutenant general of Acadia, and the circumjacent country," accomplished but little. His patent allowed him to "carefully search after and to dis-



tinguish all sorts of mines of gold and silver," and gave him the monopoly of the trade in furs. He seems to have confined his attention to measures to secure the latter; yet fish were caught, cured, and carried to France. A permanent fishery was established at Canseau. Acadia soon passed from De Monts into Catholic hands, while the English grant to Sir William Alexander, in 1621, embraced a large part of it. As the events connected with our subject at this time appear in the account of the French fisheries, there is nothing to demand our attention until after Nova Scotia was permanently annexed to the British crown, by the treaty of Utrecht, in 1713.

Down to the period of our Revolution, Nova Scotia was hardly known except for its fisheries. The resident English population was so small in 1719, that Phillips, the military governor, was compelled to select the council required by his instructions from his garrison. Thirty-six years later, the whole number of inhabitants was estimated at only 5,000. In 1760, the township of Liverpool was settled by persons from Massachusetts, who designed to prosecute the salmon fishery, and who, successful in their labors, caught a thousand barrels in a season. They were followed in 1763 by about one hundred and sixty families from Cape Cod, who selected the spot called Barrington, transported thither their stock and fishing vessels, and founded one of the most considerable fishing towns at present in the colony. The whole value of the imports at this period was less than five thousand dollars. In truth, the House of Assembly asserted in 1775, that the amount of money in Nova Scotia was £1,200, (or \$4,800) of which one-fifth was in the hands of farmers. Such was the general condition.

The settlement of Halifax, the capital, requires a more particular notice. Thomas Coram, a famous projector of the time, whose name occurs often in the history of Maine, engaged in a scheme to commence a town on the site of this city as early as the year 1718, and his petition for a grant of land received a favorable report from the Lords of Trade and Plantations; but the agents of Massachusetts opposed his plans, because they interfered with the freedom of the fisheries, and he was compelled to abandon his purpose.\*

At the restoration of Cape Breton, in 1748, the founding of a capital for Nova Scotia was undertaken as a government measure. "As a substitute" for Louisbourg restored to France, said Mr. Hartley in the House of Commons, "you settled Halifax for a *place d'armes*, leaving the limits of the province as a matter of contest with France, which could not fail to prove, as it did, the cause of another war. Had you kept Louisbourg, instead of settling Halifax, the Americans† could not say, at least, that there would not have been that pretext for imputing the late war to their account." The new city was named in honor of the Earl of Halifax, the president of the Lords of Trade and Plantations.‡ "The site," says Haliburton, "about mid-way between Cape Canseau and Cape Sable, was preferred to several

\* It is said, in Burke's *Commoners of England*, that Major William Markham, (of the family of Markham of Becca Hall,) who was born in 1686, built the first house in Halifax, Nova Scotia.

† This speech was in 1775.

‡ Horace Walpole wrote to Sir Horace Mann, in 1749: "Half our thoughts are taken up—that is, Lord Halifax's are—with colonizing Nova Scotia; my friend, Colonel Cornwallis, is going thither commander-in-chief. The Methodists will scarce follow him, as they did Oglethorpe" to Georgia,

others, where the soil was better, for the sake of establishing in its neighborhood an extensive cod-fishery, and fortifying one of the best harbors in America." Thus, Halifax was designed as a fishing capital, and "as a substitute for Louisbourg." Liberal grants of land were made to officers and men who were dismissed from the land and naval service at the close of the war, and Edward Cornwallis was appointed military governor. Horatio Gates, then an officer in the British army, and subsequently the victor at Saratoga, was among the first who landed at Halifax, in 1749.

The project involved the government in serious difficulties, and the expenditure of enormous sums of money.

The amount first appropriated was £40,000. In a few years the cost to the nation was nearly two millions of dollars! The fisheries were neglected, and the colonists, unable to support themselves, petitioned Parliament for additional relief, even after so large an amount of money had been disbursed for their benefit.

Omitting details, we may state that five millions of dollars of public money were expended finally in the colonization of Nova Scotia, according to the plan devised by the Board of Trade and Plantations.

A letter is preserved in the Collections of the Massachusetts Historical Society, from a resident of Halifax to the Rev. Dr. Stiles, which may afford a partial explanation to this state of things. It is dated in 1760. "We have," says the writer, "*upwards of one hundred licensed houses, and perhaps as many more which retail spirituous liquors without license; so that the business of one half the town is to sell rum, and of the other half to drink it. You may, from this single circumstance, judge of our morals, and naturally infer that we are not enthusiasts in religion.*" Again: "Between this and Cape Sable are many fine harbors, commodiously situated for the cod-fishery; and the rivers furnish great abundance of salmon." \* \* \* \* "The fleets and armies which have been here during the war have enriched this town, but have given a mortal blow to industry:" and, he adds, "we have but few people of genius among us; *and not one discovers a thirst after knowledge, either useful or speculative.*"

Halifax became a place of note in the war of the Revolution, and as the great naval station of the British government. At the peace of 1783, Nova Scotia became the home of many thousands of American loyalists, who, under the policy adopted by the winners in the strife, were compelled to abandon their native land. Many of them were persons of elevated moral qualities, of high positions in society, and of great spirit and enterprise; several were natives of Massachusetts, and graduates of Harvard University. Others had held prominent rank in New York and New Jersey. From this period, we may date a change in the morals of the colony, and note a partial attention to the fisheries.

Omitting the few fragmentary accounts that are to be found scattered through the records which I have examined, we come at once to consider this branch of industry as it exists in our own time. And, singular to remark, attention to the fisheries is still partial. No American visits Nova Scotia without being amazed at the apathy which prevails among the people, and without "calculating" the advantages which they enjoy, but will not improve. Almost every sheet of water swarms with cod, pollock, salmon, mackerel, herring, and alewives; while the shores abound in rocks and other places



suitable for drying, and in the materials required for "flakes and stages." The coasts are everywhere indented with harbors, rivers, coves, and bays, which have a ready communication with the waters of the interior; scarcely any part of which—such is the curious freak of nature—is more than thirty miles distant from navigation. The proximity of the fishing grounds to the land, and to the homes of the fishermen,—the use that can be made of seines and nets in the mackerel fishery,—the saving of capital in building, equipping, and manning vessels,—the ease and safety which attend every operation, combine to render Nova Scotia the most valuable part of British America, and probably of the world, for catching, curing, and shipping the productions of the sea.

Yet the colonists look on and complain of us. They will neither fish themselves nor allow us to do so. In the words of a late official report on the "Fisheries of Nova Scotia," "From seven to eight hundred [American] vessels are said annually to pass through the Gut of Canso, which usually return home with large cargoes taken at our very doors. *There is always a great deal said about their encroachments, and we are apt to blame them that our fisheries are not more productive than they are, and, instead of engaging all our energies to compete with them, we are employing a host of revenue cutters, &c., to drive them from our shores.* Everybody must see that the Americans are placed under many disadvantages for prosecuting the fisheries in British waters, and that *if proper enterprise were employed, our advantageous position would enable us not only to compete with them successfully, but also to drive them from our shores by underselling them in their own markets.* But we find that they almost entirely monopolize our deep-sea fishery, while *we look idly on and grumble at their success.*" This covers the whole ground; and coming, as it does, from the pen of a colonial official, is conclusive.

Judge Haliburton, in his efforts to rouse his fellow-colonists from their lethargy, adopting as his motto, that

"The cheerful sage, when solemn dictates fail,  
Conceals the moral counsel in a tale,"

utters similar sentiments. His renowned hero, "Sam Slick," the Yankee clockmaker, in the course of his "sayings," thus speaks of the people of Nova Scotia, and of their advantages: "They do nothing in these parts," says Sam, "but eat, drink, smoke, sleep, ride about, lounge at taverns. \* \* \* They are a most idle set of folks, I tell you. \* \* \* They are in the midst of fisheries, squire; all sorts of fisheries, too. River fisheries of shad, salmon, gasperause and herring; shore fishery of mackerel and cod; bank fishery, and Labradore fishery. Oh dear! it beats all; and they don't do nothin with 'em, but leave 'em to us. \* \* \* I never seed nor heard tell of a country that had so many natural privileges as this. Why, there are twice as many harbors and water-powers as *we* have all the way from Eastport to New Orleans. They have all they can ax, and more than they deserve. \* \* \* You've heard tell of a man who couldn't see London for the houses; I tell you, if *we* had this country you couldn't see the harbors for the shipping."

The cod-fishery of the shores differs so little from the shore fisheries at Newfoundland, St. Pierre, and Miquelon, already spoken of, that we shall not here give an account of it. The vessel fishery, both on the

coasts of Nova Scotia and at Labrador,\* is also so nearly like our own, that a description of it may be omitted to avoid repetition.

The herring fishery will detain us but a moment. The export of smoked-herring has declined very much. Towards the close of the last century the quantity shipped was from 50,000 to 60,000 boxes annually. In some years, too, previous to 1819, the export was even more, and from 80,000 to 100,000 boxes. At present the average is less than half the quantity of either period. The natural advantages possessed by the colonists of the shores of "Annapolis basin" are unequalled in the whole world. Digby and Clements should be the seat of the most extensive herring fishery in America. This fish, well smoked and of approved color, is a great luxury for the forenoon lunch and for the tea-table; and the time *has* been when a herring-box branded "Digby," or with the name of a well-known curer there, passed as current in our markets, without examination, as coin received at the mint. This is high but deserved praise. The whole quantity smoked in 1850 was but 2,000 boxes. The scenery in the vicinity of the "basin" is truly beautiful; and the "basin" itself is one of the safest shelters for boats and vessels required for the fishery that is to be found in America.

The mackerel fishery is in favor, and, compared with the cod and herring fisheries, receives commendable attention. The present state of this branch of industry is to be attributed to the recent change in our tariff of duties imposed on foreign-caught fish, and to the facilities afforded by our warehouse system. This change, it hardly need be said applies to dried and smoked fish as well as to pickled; and, were the causes just assigned the true ones, it might be concluded by those who are not acquainted with the colonial character, that increased exertions would be witnessed on *all* the fishing grounds. Explanation

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\* A Halifax paper, in the spring of 1852, indulged in the following course of remark: "We learn that no less than twenty-five vessels cleared at this port for the Labrador fishery on Saturday last. We have been much gratified with the improved appearance of the schooners comprising our fishing fleet this season. The class of Nova Scotiamen at present engaged in the fisheries would do credit to any country in the world, our enterprising and energetic neighbors, the Americans, not excepted. Where all are deserving of praise, it would appear almost invidious to particularize; but we must not omit to chronicle a very superior craft which we observe receiving her supply of salt alongside the brig 'Wellington,' at Oxley's wharf, called the 'Ocean Wave.' This fine vessel was recently launched at Lunenburg by a Mr. Young, and was built expressly for the fishing business. She appears to have been most carefully constructed, and her outfit is after the most approved fashion. There is a reasonable probability of this most important branch of provincial industry proving eminently successful during the present season; and we can only hope that the desideratum may be realized to its fullest extent. Our fishing friends cannot be too careful in curing their catch. The markets for their valuable products are extending on every hand. It is essential that the character of this, our staple article of export, should be established beyond the shadow of a doubt. Due attention to this matter will repay our fishermen a hundred fold for any extra time, labor, or attention bestowed on the making of their fish. Let all interested look to this all-important matter, and a rich harvest may be reaped in the future. It is satisfactory to know that the parties who have this season fitted out for the fisheries are, many of them, both forehanded and intelligent qualifications indispensable in the successful prosecution of this valuable branch of industry."

In August, 1852, it was again said that, "We are enabled to record the gratifying intelligence, that of twenty-seven vessels fitted out from ports in Lunenburg county for the Labrador, twenty-six have returned well fished—one vessel bringing home the handsome fare of 1,100 quintals. This almost unprecedented success is perhaps, in a great measure, attributable to the vigilance of the revenue cutters stationed on the coast by the Canadian government for the protection of the fisheries."



is easy. *The mackerel fishery is the least laborious and the most profitable.*

I know something of the energy and skill of our fishermen, and appreciate them highly; but I feel quite certain that under a system of *ad valorem* duties their competitors in Nova Scotia and elsewhere in British America will, ere long, supplant them in our own markets. As has been already remarked, the colonists may take every kind of fish, in any desirable quantities, at their very homes, and without the expense of large vessels or extensive outfits; while the pursuit in the more distant haunts of cod and mackerel is attended with less cost than from the ports of Massachusetts and Maine—for the reason that the labor, timber, iron, cordage, and canvass, necessary for the construction and equipment of vessels, and the salt, hooks and lines, for their outfits, are much cheaper. These advantages will be acknowledged at once, and unless the observation of many years has led me astray, they are too great to allow of the present reduced scale of impost.

Severely as the late change of policy with regard to the admission of foreign fish has been felt by all branches of our fisheries, the mackerel catchers have suffered the most. They still pursue the employment in the hope of the restoration of specific duties, and because their local position and other circumstances have not, as yet, allowed them to adopt any other. As was said by Fisher Ames, soon after the organization of the present national government, when appealing for protection to our fishermen, "they are too poor to stay—too poor to remove."

It is even so. During certain months of the year our vessels seek the mackerel in the waters of Nova Scotia and other British possessions; but as our treaty with Great Britain requires them to keep three miles from the land, the fishery in the narrow straits, by the means of nets and seines, is in colonial hands exclusively. The quantities of fish which the colonists sometimes take in nets and seines are immense. It is not long since forty thousand barrels were caught in three harbors of Nova Scotia in a single season. *This quantity is more than one-tenth of the whole obtained by all the vessels of Massachusetts in the most prosperous year.* Yet these three harbors can be entered in sailing a distance of twelve miles. The owners of American vessels often lose the use of their property, and the expenses of outfits besides. The proprietors of estates in the colonies where mackerel seines are used, receive, on the other hand, hundreds of barrels of the fish caught in the waters appurtenant thereto for the rent of these waters, and the privilege of dressing, salting, and packing on the shores. To secure two, four, six, and even eight hundred barrels at a time, it is only necessary to set a seine, to tend it, and, at the proper moment, to draw it to the shore. Competition without protection, when such rewards as these await the colonial fishermen and land owners, who expend nothing whatever for vessels, and whose whole outlay involves little beyond the cost and wear of seines and the loss of time for short periods in a season, is, I think, impossible. The lot of those of our countrymen who live by the use of the hook and line is hard enough at best. The battles which they have fought, and which, in the course of events, they may be required to fight, ought to prevent their utter ruin. The topic will be resumed elsewhere.

Macgregor, in his "Progress of America," published in 1847, thus speaks of occurrences at Crow Harbor and Fox Island, two of the favorite resorts of mackerel in Nova Scotia. "These places," he remarks, "while the fishing season lasts, are generally the scenes of the most lawless disorder and licentiousness, occasioned by the violence of the fishermen contending for the best places to haul the seines ashore; the pillaging of the fish; the selling and drinking of rum; the smuggling of goods by the Americans; and often from the mere spirit of spoliation and mischief. A ship-of-war has been occasionally sent round from Halifax to preserve some sort of order among the multitudes of men, boats, and schooners that resort to these harbors," &c., &c.

*Statistics of the Nova Scotia cod, mackerel, and herring fisheries—mackerel exported included with pickled fish exported until 1845.*

Years.	Employed.			Exports.					
	No. ves- sels and shallops.	No. of boats.	No. of men.	Quintals of dry fish.	Barrels of pickled fish.	Boxes of smoked fish.	Barrels mackerel.	Barrels of oil.	Value.
1788						* 50,000			
1805, 1806, 1807...				81,191	43,299	10,410			
1815, 1816, 1817...				152,698	40,420	65,675			
1818						* 80,000			
1828				174,017	42,220				
1832	570	640		160,640	37,154	8,641		2,840	\$509,820
1833									
1836				262,245	47,517				745,232
1837				427,140	64,803				727,844
1838				434,309	94,855				
1840				327,026	73,788	27,755		9,544	
1843	240	3,400	10,000						
1844									
1845				302,520	54,190	25,522	40,552		
1846				274,549	52,718	19,271	81,985		
1847				314,951	35,064	19,529	187,016	7,090	
1848				271,475	32,544	34,157	167,028		
1849				241,411	55,570	16,980	133,210		
1850				† 191,802	47,786	† 3,234			
1851	812	5,161	10,394	196,434	163,795	15,409	100,047		941,896

\* Estimated.

† From Halifax.

The number of nets and seines in 1851, by the official return, from which the statistics of that year are derived, was 30,154. The population of Nova Scotia in 1851 was 266,117.

#### FISHERIES OF THE ISLAND OF CAPE BRETON.

The extraordinary value placed upon this island by the French, and by the people of New England, as well as the expenditures and exertions of both—the one to fortify and retain possession of it, the other to capture it—have been considered in the first part of this report. We may here, without repeating anything there stated, give a view of the whole subject by an extract from the "proposals" of Robert Auchmuty, of Boston, to the British ministry while in London, in 1744, the year previous to the expedition against Louisbourg under Pepperell.

Auchmuty, it will be remembered, was a distinguished lawyer and judge of the vice admiralty court for Massachusetts and New Hampshire. The communication in question is headed "The Importance of Cape Breton to the British Nation," and commences with the following remarkable declaration: "This island, situated between Newfoundland and Nova Scotia, the English exchanged with the French



for Placentia in the treaty of Utrecht; and during the late peace between the two nations the French, by the advantage of the place, carried on an unbounded fishery, annually employing at least a thousand sail, from two hundred to four hundred tons, and twenty thousand men. In the year 1730, there was a computation made of twenty-two hundred thousand quintals of fish at Marseilles, only for a market; and *communibus annis*\* they cure above five millions of quintals. How dangerous a nursery of seamen this island, therefore, has been, and ever will be, while in their possession, is too obvious to a British constitution; and it is as demonstrable the recovery of a place of this consequence will entirely break up their fishery, and destroy this formidable seminary of seamen; for if they are happily removed from this advantageous shelter, no protection is left for them on the fishing ground nearer than old France." Such are the exaggerated statements and conclusions of one of the most intelligent men of New England of the last century. He, of course, did but embody and repeat to the ministry the opinions expressed in Boston before his departure for England, and his declarations are accordingly to be considered as those common at the time. The number of quintals of fish caught and of vessels employed at Cape Breton in 1744, which I have placed in the table of statistics, though much less than Auchmuty's computations, and though authorized by authentic documents, and particularly by an official report of a special agent of Governor Shirley, I consider too large.

That, however, the French fishery was extensive at this island, cannot be doubted. But whatever allowance should be made in the estimates and figures of exasperated rivals, enough remains certain to show that there has been a great decline in this branch of industry since Cape Breton became a possession of the British crown.

Louisbourg, the once famous fortress, is now a heap of ruins. Even the materials of which it was built have been carried away, to a very considerable extent, to be used in the erection of structures hundreds of miles distant. It is almost desolate. Those who visit it—with the aid of the imagination—hesitate to believe that armies and fleets once fought with desperate valor to retain and to win it; that the deep silence which prevails was ever broken by crowds of busy people; that ships laden with rich cargoes ever anchored in waters which even fishermen of our day seldom enter, except for shelter; that around them were lofty and, as was thought, impregnable walls, and nunneries, palaces, terraces, and ga dens.

The English history of Cape Breton, as connected with our subject, is brief.

Separated from Nova Scotia by a narrow strait only, it was annexed to that colony, soon after its final cession, at the peace of 1763; but in 1784 was created a province, and allowed corresponding rights until 1820, when it was re-annexed to the government of Nova Scotia. The population in 1839 was about 35,000, and in 1848 nearly 50,000.

Great as were the expectations of the conquerors, its fisheries have never been of account since the conquest. The statistics indicate no increase, but, on the contrary, a considerable decline. The exports, at the present time, are less than in 1828. In fact, Cape Breton is the poorest part of British America.

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\* One year with another.

As late as 1840, a gentleman officially connected with its fisheries gave a most lamentable description of the poverty of those who depended upon them for subsistence. Having stated that, while in possession of the French, the exports were of the immense value of £927,577 sterling, that 564 ships and 27,000 men were employed, and that the whole produce now was only 80,000 quintals, and 50 tuns of oil, he proceeds as follows: "The fisherman is supplied at such extremely high prices, that, after his season's work is over, what he has caught frequently does not amount to the cost of his outfits: thus he returns to his family with a poor prospect of providing for their winter's supply." "I have seen families," he continues, "covered with scurvy, applying for medicine, and although they obtained it, were informed by the doctor that it was fresh and wholesome provision they wanted most; at which time one of the parties admitted that his stock was reduced to some herrings and a few potatoes." "In like manner," he adds, "when the militia muster took place, I knew of some who came seven miles, and who, without money to purchase food, returned home fasting."

Had the cases related by this functionary been such as exist in every community, they would not have been thus mentioned. It is not to be presumed, however, that while so great destitution is prevalent, it is *general* among the fishermen of Cape Breton. Yet tales of their wretchedness and poverty are common. Masters of our fishing vessels, who visit the coast, have told me repeatedly that in the spring they were beset by persons who offered to barter away almost their last article of value, and even begged for food. To make every allowance, we may still fairly conclude that those who earn their bread in fishing boats and shallops, as a body, enjoy few comforts, and often suffer for the absolute necessities of life.

The seas of Cape Breton, neglected, shunned even, as if a curse rested upon them, and as if the spirits of the slain of a by-gone generation hovered over them, are as rich as they ever were; and as safe, too, for the employment of capital, skill, and labor, as when the successful adventures of the Catholic French roused all Puritan New England in a crusade to possess them. Were these seas *ours*, we should soon prove the truth of this remark. Could the descendants of those who first won Louisbourg for its present nominal owners, settle amid its ruins, the few fishers' huts that serve to mark its site would disappear, and a thrifty, well-built town take their place. The harbor is one of the best on the eastern coast, and the situation such as to render access to the fishing grounds in the waters of the St. Lawrence easy. In a word, distant, lone, and dreary as is the ancient fishing capital of France, enterprise and industry are alone wanting to restore it, in some measure at least, to importance and prosperity.



*Statistics of the fisheries of the Island of Cape Breton.*

Years.	Produced.					Employed.		Exports.				
	Dried fish.	Pickled fish.	Seal-skins.	Oils, all kinds.	Value.	Boats and shal-lops.	Ves-sels.	Dried fish.	Pickled fish.	Seal-skins.	Value of oils.	Total value of ex-ports.
	Quintals.	Bar-reis.	No.	Tuns.	Dol-lars.	No.	No.	Quin-tals.	Bar-reis.	No.	Dol-lars.	Dol-lars.
1744..	1,441,500	.....	.....	.....	.....	.....	564	.....	.....	.....	.....	.....
1828..	.....	.....	.....	.....	.....	690	.....	41,320	18,140	.....	.....	.....
1845..	.....	.....	.....	.....	.....	.....	.....	15,577	8,006	820	.....	93,635
1847*	56,312	32,919	12,100	415	302,616	1,341	184	.....	.....	.....	.....	.....
1848*	39,336	36,907	2,200	543	282,772	.....	175	.....	.....	.....	.....	.....
1849..	.....	.....	.....	.....	.....	.....	.....	12,680	16,117	.....	8,556	106,801

\* Of these, 17,200 barrels mackerel in 1847, and 14,050 barrels in 1848.

## FISHERIES OF PRINCE EDWARD ISLAND.

Prince Edward Island is in the Gulf of St. Lawrence, and is one hundred and seventeen miles long.

Cabot, in 1497, after losing sight of Newfoundland, and on the 24th of June, saw other land, to which, in honor of the day, he gave the name of St. John. The discovery was assumed to be this island, and it bore the name of St. John for a long period. The French, claiming that Verrazani was the first discoverer, granted it—in 1663—to the Sieur Doublett, a captain in the navy, to be held by him in vassalage of the royal company of Miscou. The Sieur's associates were two companies of fishing adventurers from St. Maloes and elsewhere in France, whose settlements upon the island were confined to places on the coast suited to their pursuits.

The French from Nova Scotia and Cape Breton emigrated thither until the government, to prevent the depopulation of Louisbourg, prohibited fishing except in certain harbors.

In 1758 the isle St. John surrendered to the British; and at the peace of 1763, was permanently annexed to the crown of Great Britain. The population was about 6,000. There were several thousand "black cattle" owned by the inhabitants at this time; and the cultivation of the soil was so extensive that it was called the "granary of Canada." Among the proprietors of land in 1775 was General Charles Lee, who owned a tract of ten thousand acres, on which he had expended about five thousand dollars. As he had been an officer in the British army, and had served in America, it may be presumed that this estate was a grant from the crown.\*

At the peace of 1783, the isle St. John became the home of several of the "tories" or loyalists of the Revolution, and, the following year, was formed into a colony and called Prince Edward Island. The population in 1806 was less than 10,000; in 1841 it was upwards of 47,000.

\* General Charles Lee was a colonel in the British army, and served in America in the French war. He lost the favor of the ministry by his course in the revolutionary controversy, and entered the service of Congress. His dislike of Washington was the cause of his ruin. He died at Philadelphia in 1782.

The north and south coasts are much indented with bays and coves, and the waters teem with fish. But as the soil is generally good, and owned by persons of skill and property, the fisheries are much neglected. Various attempts have been made to induce greater attention to maritime pursuits.

In 1842, it is believed that a company was formed in England, with a capital of several hundred thousand dollars, to promote this object. The plan of this association was, as is said, to purchase land for a town, erect buildings, and send over two thousand persons. Of its actual operations and success I have no knowledge. In 1844 the governor of the colony, "in a speech from the throne," recommended the organization of a company for the prosecution of the fisheries.

Mackerel are at times abundant. A single example will suffice: In 1848 an American schooner was dismasted, and put into Georgetown to repair. Having refitted, she went to sea, and returned to port with eighty barrels of fat mackerel, after being absent only one week. The fish were taken, however, in two days, the weather interfering with operations during the remaining part of the time.

The exports of Prince Edward Island are not large, and often merely nominal; the catch of the various kinds of fish hardly exceeding the demand for domestic consumption.\*

During the season for fishing our vessels frequent the coasts in fleets; and as many as six or seven hundred have been seen in the vicinity of the island in a single year.

Captain Fair, of the royal navy, in command of her Majesty's ship the *Champion*, who was upon the station in 1839, passed the number here stated, and bears honorable testimony to their good conduct.

The feelings of the inhabitants towards our countrymen may be ascertained from the following resolution, which is understood to have passed the House of Assembly unanimously during the session of 1852:

"*Resolved*, That a committee be appointed to prepare an address to her Majesty the Queen, praying that she will cause to be removed the restrictions of the treaty of 1818, prohibiting American citizens from fishing within certain prescribed limits on the shores of the island; provided the American government admit articles the growth or production of this island into the United States duty free, in accordance with the act 12 Vic., cap. 3, including fish; also, vessels built on this island to American registry; and that the legislative council be requested to join in the said address."

#### FISHERIES OF THE MAGDALENE ISLANDS.

The Magdalene Islands fisheries are of consequence. These islands, seven in number, are in the Gulf of St. Lawrence, and about forty miles northwesterly of Cape Breton. They originally belonged to the French, and were first granted, I suppose, in 1663, to the *Sieur Doublett* and his associates, as a fishing station, under the feudal tenure, as a fief of the royal company of *Miscou*. After they became possessions of the British crown they were granted to *Richard Gridley*, of Massachusetts, who served under *Pepperell* at the siege of *Louisbourg*, who,

\* The value of the products of the sea exported in 1851, was only \$38,776; while of the single agricultural article of potatoes, the value was \$47,568.



in 1775, laid out the works on Bunker's Hill, and who was retained by Washington as chief of the engineer department of the continental army.\*

The Magdalene islands are thinly inhabited, at the present time, by fishermen, many of whom are the lineal descendants of the Acadians, who made the first permanent settlement in North America, under De Monts, the original French grantee of Acadia, or Nova Scotia. The fishermen of Acadian descent retain to this day the dress, the customs, language, and religion of their ancestors.

The herring fishery at these islands at times is very extensive. The catch, in some seasons, has been from eighty thousand to one hundred thousand barrels; and as many as one hundred and fifty vessels from the United States have been seen there at once. The quality of the fish is, however, poor, and the curing and packing carelessly performed. I have seen whole cargoes that, unfit for human food, were entirely worthless, except as dressing for grass lands.

Large seines are used in the fishery, and hundreds of barrels are often taken at a single haul. The inhabitants welcome the arrival of our fishermen, and treat them kindly. No serious difficulties have ever occurred, and in no part of British America, probably, have the relations of the people of the two nations been more intimate or more harmonious.†

By a singular arrangement, these islands are included in the government of Canada. As communication with the capital of that colony is interrupted by ice and inclement weather nearly half of the year, and is generally free with Nova Scotia, annexation to the latter is much to be desired.

*Statistics of the year 1848.—Exports.*

Quintals of dried fish.	Barrels of pickled fish.	Boxes of smoked fish.	Number of seal-skins.	Gallons seal and cod oil.	Value.
34,448	17,574	6,115	21,308	114,403	\$223,796

\* Whether Colonel Gridley retained the ownership of these islands until the Revolution, and lost them in consequence of the part he took in that event, is unknown to me. But the Magdalenes were a second time granted by the British crown. The last grantee was the late Admiral Sir Isaac Coffin, who, at his decease, is understood to have bequeathed them to Captain John Townsend Coffin, of the royal navy, to be held by him and his heirs male, in strict entail. Captain Coffin leased these islands for the term of his life, it is believed, in the spring of 1852, to Benjamin Wier, of Halifax, and John Fontana, a resident at the Magdalenes.

† Perhaps the year 1852 forms an exception. There was a difficulty of some sort in the spring, but the exact facts have not been ascertained. The Halifax Sun, in giving an account of the trouble, says: "The Americans, not satisfied with infringing the provisions of the treaty by casting their nets side by side with the British residents and subjects within the limits prescribed, per force of numbers and audacity took possession of the fish in the nets of their competitors. The indignant residents rallied in strong force; an American vessel and crew were captured in way of reprisal, and taken into harbor. The Americans during the night following gathered in their strength, and triumphantly 'cut the vessel out,' leaving the skipper, however, in durance under lock and key."

## FISHERIES OF THE BAY OF CHALEURS.

The Bay of Chaleurs was explored by Jacques Cartier, in 1534. He gave the name it bears—the “Bay of Heat.” On its shores are some of the oldest settlements in North America.

As at the Magdalene islands, many of the fishermen here are Acadian French, a people whose story possesses a melancholy interest, and whose sufferings at an eventful period of their history have been commemorated by the poet Longfellow, in “Evangeline.” They continue to live in villages distinct from the English settlers, and within sound of the chapel bell. The most devout and decided Catholics, they seldom intermarry with Protestants. After the services of Sunday, they assemble for social enjoyment and amusement. Few of them are corrupt and vicious, but most are superstitious and ignorant. The women, like those of the ancient fishing-town, Dieppe, in France, from which their ancestors came, wear calico caps or handkerchiefs tied over the head, short petticoats of woollen stuff striped with red, white, and blue, and plaited in large folds at the waist, and blue stockings; while on Sunday, over a neat and clean attire, they throw upon the shoulders a small blue cloak, reaching about half way down the body, and fastened at the breast with a brass brooch. The men appear in short round jackets, with straight collars and metal buttons set close together, blue or scarlet waistcoats and blue trowsers, and sometimes the *bonnet rouge*, but generally round hats. Individuals, however, of both sexes, dress differently. The women, or “fish-wives”—as at the fishing ports of Normandy, Piccardy, and Brittany, in France—work very hard, performing the whole labor of curing the fish, in addition to the ordinary duties of cooking, spinning and weaving, and the care of the children.

The cod-fishing establishments in this bay are ancient and extensive. Of those of modern times, that of Messrs. Robin & Co., founded in 1768, is the largest, best ordered, and most prosperous. They have a number of finished buildings, which are conveniently arranged, and kept in excellent repair. They export about 30,000 quintals of cod annually, besides a quantity of pickled fish and oil. Their vessels come from the Isle of Jersey in the spring, are dismantled on arrival, and lie moored until the close of the fishing season; the masters and crews either fishing in boats, or collecting the fish caught by residents, who obtain their supplies and outfits of the firm. In the autumn the vessels are equipped, and depart for Europe with full cargoes. It is said that the first head of the firm, the late Charles Robin, among other rules for the management of the business, directed in his will that no female should reside at, or be employed at any of the fishing establishments of the concern; and that, in accordance therewith, the gentlemen and clerks of the present firm of Robin & Co. leave their families in Jersey while sojourning in the Bay of Chaleurs.

The fishery is carried on almost entirely in boats, two persons in each, who return home every night and land the day's catch. At the close of the season the resident fishermen settle with the merchants with whom they deal, carrying to their storehouses all the fish not previously collected by their agents.

The whale fishery is pursued to some extent in the Bay of Chaleurs and the adjacent seas. “The whales caught within the Gulf of St. Lawrence,” says Macgregor, “are those called ‘hump-backs,’ which



yield, on an average, about three tuns of oil. Some have been taken seventy feet long, which produced eight tons. The mode of taking them is somewhat different from that followed by the Greenland fishers, and the Gaspè fishermen first acquired an acquaintance with it from the people of Nantucket. An active man, accustomed to boats and schooners, may become fully acquainted with everything connected with this fishery in one season. The vessels best adapted for the purpose are schooners of from seventy to eighty tons burden, manned with a crew of eight men, including the master. Each schooner requires two boats, about twenty feet long, built narrow and sharp, and with *pink* sterns; and two hundred and twenty fathoms of line are necessary in each boat, with spare harpoons and lances. The men row towards the whale, and when they are very near, use paddles, which make less noise than oars.

"Whales are sometimes taken fifteen minutes after they are struck with the harpoon. The Gaspè fishermen never go in quest of them until some of the small ones, which enter the bay about the beginning of June, appear; these swim too fast to be easily harpooned, and are not, besides, worth the trouble. The large whales are taken off the entrance of Gaspè bay, on each side of the island of Anticosti, and up the river St. Lawrence as far as Bique."

In Gaspè basin—I ascertain from another source—the whale fishery is one of the chief means of support. Yet the number of inhabitants is small. Four or five schooners of the size mentioned by Macgregor are employed, and probably two hundred men. The produce is about 20,000 gallons annually. The basin is safe, commodious, and easy of access. The whales are taken at and near its entrance in the spring, and around the island of Anticosti and on the north shore of the St. Lawrence in the summer.

The fisheries of Canada, other than those of the Magdalene islands, Bay of Chaleurs, and Gulf of St. Lawrence generally, are too inconsiderable to require attention. While Canada was a possession of France, the seas were neglected. Twenty years after the conquest the exports of fish were small. From Canada *proper* there has been no increase, as will be seen.

*Exports from Canada, (proper.)*

Years.	Quintals dried fish.	Tierces salmon.	Smoked salmon.	Tuns oil.	Value.
1783.....	941	.....	304	505	.....
1784.....	2, 145	.....	221	100	.....
1785.....	5, 346	.....	.....	438	.....
1786.....	885	1, 100	253	185	.....
1849.....	.....	.....	.....	.....	\$23, 220

*Exports from Quebec, Gaspè, and New Carlisle, presumed to be of the produce of the Bay of Chaleurs fisheries.*

Years.	Quintals dried fish.	Bhls. pickled fish.	No. seal- skins.	Gallons fish oil.	Value.
1832.....	55, 924	2, 962	4, 675	27, 681	\$160, 262
1838.....	45, 116	1, 618	.....	9, 513	177, 067
1843.....	61, 448	858	.....	28, 890	192, 898
1848.....	87, 137	3, 667	6, 548	34, 292	359, 209

## FISHERIES OF LABRADOR.

The coast of Labrador was partially explored by Jacques Cartier in 1534. He was beset with ice, and encountered many difficulties. Little was known of the country for a long period after the voyage of the French navigator. It has been said, however, that our cod-fishery was extensive in this region, not only previous to the Revolution, but in the early part of the last century. The statement I consider entirely erroneous. As I have examined the scattered and fragmentary accounts of Labrador, there is no proof whatever that its fishing grounds were occupied by our countrymen until after we became an independent people.

In 1761 Sir Francis Bernard, who was then governor of Massachusetts, wrote a brief "Account of the coast of Labrador," which—found among some of his papers—is preserved in the Collections of the Massachusetts Historical Society. After some general remarks upon the country, and the ignorance that existed relative to the natives, he proceeds to say that, "What follows shall be a plain narration of facts, as I received them from several persons who have been on the Esquimeaux coast, with now and then a digression, which I hope may be pertinent." These persons appear to have been Captain Henry Atkins, of Boston, who made a voyage to Davis's straits in the ship *Whale* in 1729, and who visited the coast a second time in 1758, and a Captain Prebble, who was sent by Atkins in 1753. The Baronet describes the course of affairs between Atkins and the Indians in 1729, and adds that he "is the more particular in this account from the captain's own mouth, as he thinks it plainly indicates that the natives on this coast and islands had never any trade or commerce with any civilized people from Europe or America; of course not with the French from Canada, or the Hudson's Bay factories." This is conclusive, especially if it be remembered that the object of Sir Francis was to collect information "for the advantage of future navigators." His memory was remarkable, and he himself said that he could repeat the whole of Shakspeare. Of course, this paper embraced everything that had been communicated to him.

As late as 1761, then, it is not probable that fishermen of *any* flag had visited the waters of Labrador. An account of the origin of our own fishery there will be found in the proper place.

The English whale and seal fisheries were the first, and employed upwards of one hundred vessel, at times, prior to the year 1775. The earliest adventures were near 1763; as at that time the Labrador country was politically separated from Canada, and annexed to the government of Newfoundland by royal proclamation, to the end that the "open and free fishery of our subjects may be extended." The pursuit of the cod and salmon followed. Meantime the Moravians, whose principal settlement is at Nain, who have ever led a quiet and simple life, and who now annually ship furs, oils, and other productions of that region to England, in payment for the manufactured commodities which they require, had founded a colony.

The islands are so numerous and so near each other as to resemble, and often to be mistaken for, the main land. Back from the coast, the country is still unknown. Labrador still forms a part of the colony of Newfoundland. The natives bear the general name of Esquimeaux. The resident inhabitants of European origin are English,



Irish, Jerseymen, and Canadians, who are employed either on their own account, or as the servants of others, as furriers, seal-catchers, and cod and salmon fishers.

The fishing establishments of the English and Jersey merchants are extensive and well conducted. They are engaged in the cod and salmon fisheries, and in the taking of seals. In the year 1831, the value of their shipments to Europe was upwards of \$200,000. The number of these commercial houses is from ten to twelve, who manage their business at Newfoundland, either by the temporary presence of junior partners or clerks, or by resident agents.

The people of Newfoundland, averring that the French and Americans have driven them from their own "bank fishery," resort to Labrador. They employ two or three hundred vessels. A part make two voyages in a season. The first fare is commonly cured on the coast; but the second is carried home without drying. Some of the merchants of Newfoundland ship both cod and salmon directly to correspondents in Europe; while others order their captains to return to the island and unlade their fish and oil at their own warehouses.

The Canadian fisheries are small. They send eight or ten vessels to the coast, with eighty or one hundred men. They fish for cod and salmon. They carry a part of what they catch to Quebec, and send a part to Europe.

The colonists of Nova Scotia and New Brunswick adventure at Labrador to a considerable extent; but they do not pursue the business as regularly and with as much system as do those of Newfoundland. Sometimes they send more than one hundred vessels in a year; at others the number is much less. They engage principally in the cod fishery, making a single fare and curing their fish at home.

The Labrador fisheries have "increased more than six-fold," says Macgregor, "principally in consequence of our fishermen [the English] being driven from the grounds now occupied by the French" since the year 1814; and he estimates that about twenty thousand British subjects are at present required during the fishing season in the catching, curing, and transporting the various products of these remote seas.

#### *Statistics.*

Year.	No. of vessels.	No. of men.	Quintals dry fish produced.	Tierces salmon produced.	Number of seals caught.	Tuns oil produced.	Value.
1829.....	608	9,110	678,000	.....	.....	1,682	.....
1831.....	700	11,200	720,000	2,430	16,000	2,200	\$1,450,000

#### FISHERIES OF NEW BRUNSWICK.

There were French fishing establishments in that part of Acadia now known as New Brunswick, as early as 1638. The English succeeded to these at the treaty of Utrecht, in 1713; but they do not seem to have formed many others until after the cession of Canada, in 1763\*. Among the first, I suppose, was that of Lieut. Walker, of the

\* The French built two forts on the river St. John prior to the peace of Utrecht, (1713,) which they repaired in 1754, although the country had been ceded to England quite half a century.

royal navy, in the Bay of Chaleurs, which was extensive, controlling the fur and fish trade of that region for several years. There were similar settlements on the river St. John; but from the estimates of Mr. Grant, made in 1764, at the request of the Rev. Dr. Stiles, the whole population of British origin could not have exceeded one thousand.

At the peace of 1783, several thousand "tories," or loyalists, compelled to abandon their native land, settled in New Brunswick, and transferred thither the jurisprudence, the social and political institutions, of "the old thirteen;" and, the year following, were allowed to organize a separate colonial government. Like those who went to that part of Acadia still called Nova Scotia, many of the loyalists were gentlemen of education, eminent private virtue, and distinguished consideration. Some obtained offices of honor and emolument; others adopted agricultural pursuits; and another class, fixing their abodes on islands and the shores of the main land, resolved to earn their support on the sea. Of the latter description, several, though compelled to toil and exposure in open fishing boats, had been persons of note and property. But, ruined by the confiscation laws of the whigs, or by the general disasters of a civil war, they resorted to the hook and line to relieve the pressure of immediate want, indulging the hope of "better times," and more congenial avocations. Few, however, abandoned the employment, and their children, trained to it from early youth, and acquiring fishermen's habits, succeeded to boats, fishing-gear, and smoke-houses, as their only inheritance, and continue it at the present day. I have often met with common boat fishermen of this lineage, whose earnings were hardly sufficient to procure the absolute necessities of life.

The fisheries of New Brunswick are prosecuted with neither skill nor vigor. The *apparent* exports, small as are the statistics, do not indicate their real condition; since it is certain, that of the products of the sea shipped to other countries, a part is first imported from Nova Scotia, and form a proportion of the exports of that colony.\* The number of vessels sent to Labrador and other distant fishing grounds is never large, and often almost nominal. The cod-fishery in the Gulf of St. Lawrence and the Bay of Chaleurs is not as extensive as might be reasonably expected from the long experience of the inhabitants there, and the general safety and productiveness of the harbors and indentations of the coast.

The same remarks need slight qualification when applied to the Bay of Fundy, and its principal branch, the Bay of Passamaquoddy. Cameron's, Doggett's, Drake's, Woodward's, Money, and Whale coves; Dark harbor, Long's eddy, Grand harbor, and Long, Duck, Nantucket, and Kent's islands, which are all in the group of islands known as "Grand Menan," afford excellent facilities for catching and curing cod, pollock, and herring, in large quantities. In the waters that surround Campo Bello, Deer, and Indian islands, as well as in those that wash Bean's, Adams's, Parker's, Minister's, Hardwood, and Fish islands, and along the coast between L'Etite Passage and Point Lepreau, embracing Mace's, and Back bays, Bliss's island, Seely's cove, Crow, Beaver, and Deadman's harbors, the advantages for fishing are

\*The imports into St. John from Nova Scotia for three months only (July 10 to October 10, 1852) of the present year, were 7,861 quintals of dried fish, 860 barrels of mackerel, 2,423 barrels of herring, and other pickled fish.



very good. Every place here mentioned is within a few hours' sail of the frontier ports of Maine, and many of them are within cannon-shot distance of the shores of the United States. The fishermen of both countries meet on the same fishing grounds; borrow and lend "bait;" ask after each other's "woman"\* at home; narrate the wonderful cures of the last-discovered remedy for the "reumatis;" complain of the "scarcity" of fish, and the low price of "ile;" discourse about "flat-hooped flour;" and generally conduct towards one another as friends and brethren, owing allegiance to one government. Indeed, the observation of quite twenty-five years authorizes me to say that the colonists always agree far better with the Americans than with each other. Our countrymen are not often considered interlopers when they leave the fishing grounds nearest home and visit those of Grand Menan; but the fishermen of Campo Bello, and the other islands on the British side of the Passamaquoddy, are sometimes roughly accosted and "twitted" when *they* venture to take the same liberty. Frequent attempts have been made to disturb the friendly relations which have generally existed between the people of the two flags, but without success. The efforts of officious individuals, and of functionaries of the colonial government, have been alike disregarded. The captains of the British ships-of-war on the station, gentlemen in their feelings, have steadily refused to stoop to wage a petty warfare against the American boats that cross the imaginary boundary line in the waters of the Passamaquoddy, though, of course, they have *always* obeyed their instructions. Yet, in the spirit of Nelson, who looked at the signal he meant to disobey with his blind eye, they have never been able to *see* a "Yankee," or to distinguish one from a subject of her Majesty. Some of them—as I remember the stories of by-gone years—admitting the necessity of driving off the aggressors, have asked, "How are we to know them—are they *marked*?" Others, sending their barges into the fleet of boats, have directed that "All who *say* they are Americans must be told to go to their own side of the line;" but, strangely enough, the unbroken silence of the fishermen to whom the question was propounded afforded proof that all were "Bluenoses." Still others, satisfying themselves, by peering through glasses from their quarterdeck, that *all* the boats in sight *must* belong to the islands in New Brunswick, have thought the sending of barges to inquire a needless ceremony. One, in 1840—the captain of the Ringdove—in his official report, recommended that "every British boat should have a license;" otherwise, said he, "it is impossible to discriminate them from Americans."

Those who seek to put an end to this state of things, whatever their motives, do not take into the account that the instant they shall accomplish their object, border strifes will follow of necessity. Before renewing their efforts, they may be kindly asked to consider that harmony and good-fellowship between the inhabitants of frontier settlements are indispensable, and far better securities against the marauder's torch and bludgeon than armed ships or bodies of troops.

The produce of the boat-fishery of the Bay of Fundy, and of the Passamaquoddy, is not only small in value, but generally inferior in quality. An increase of this fishery, under present circumstances, is

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\*They thus speak of their wives.

not desirable. The fishermen dress and cure the cod, pollock, hake, and haddock—the kinds usually dried—in a slovenly manner.

These fish, besides being rough and dirty on the "split face," frequently "slime," and thus are unfit for use. They also smoke, pickle, and pack the herring without skill and care, and decay is the consequence. There is no excuse whatever for such a course of conduct, and every offender should be held to punishment. The gentlemen of New Brunswick who complain of the decline of their fisheries, and who seek to encourage them by private "associations," and by government "bounties," should endeavor, first of all, to devise a plan to improve the reputation of the fish of this part of that colony among dealers and consumers.

I find it stated in an official document\* that in 1850, at the different fishing-stations mentioned as within these bays, there were employed 62 vessels of 1,268 tons, 344 open boats, 55 weirs, and 1,337 men, in catching and curing the several kinds of fish just referred to; and that the value of the products of the various branches of the fishery was £33,080† currency, or \$132,320.

These facts show that the fishermen received a miserable pittance for their toil; since, *without allowing for the use and depreciation of the capital invested in the vessels, boats, weirs, nets, and other fishing-gear, they earned for the year less than one hundred dollars each.* We may lament that men who pursue their avocation both day and night, mid rains and gales, are so poorly rewarded. We may lament, too, that the people of Grand Menan, falling short of those of Campo Bello, West Isles, and the parishes on the coast of the main land, earn even less than the average. But, what then? The fault is their own; entirely so. They may, if they will, produce as sweet and as well-cured pollock and cod as do their brethren of Barrington, and as good colored and flavored smoked herring as do those of Digby, and obtain prices to correspond with the quality.

The general poverty among them is not to be attributed entirely or principally, as they aver, to the occasional loss of boats and nets, nor to glutted markets and bad seasons, nor to the interlopers who visit their fishing grounds, but to their own want of industry, thrift, cleanliness, and honesty. The few "who work it right," acquire property, and enjoy the entire confidence of the dealers, command credits for supplies, and high prices for their commodities when offered for sale.

It remains to speak of the fisheries of the Bay of Chaleurs, and of the Gulf of St. Lawrence. The county of Restigouche borders on Canada, and the counties of Gloucester, Northumberland, and Kent, are favorably situated for adventures in these waters. The fishing grounds are safe, and generally close to the shores; and those near Caraquet, in Gloucester, are much frequented by boats from Gaspè, and owned by residents of Canada. Since 1835, the catch of both

\* "Report upon the fisheries of the Bay of Fundy, by M. H. Perley, esq., her Majesty's emigration officer at Saint John, N. B.; laid before the House of Assembly by command of his excellency the lieutenant governor, and ordered to be printed, 15th March, 1851." To this minute, carefully-prepared, and valuable State paper, I am much indebted for statistics and other information. Mr. Perley's endeavors to improve the condition and develop the resources of New Brunswick, are entitled to the highest commendation of his fellow-colonists.

† No statistics for Grand Menan are given. Mr. P. says a dealer estimates the value in 1849 as £12,000, which, in accordance with Mr. P.'s suggestion of being too high, I assume to have been £11,000.



cod and herring by the fishermen of Restigouche and Northumberland has fallen off more than half, and in Kent has nearly become extinct. But the inhabitants of the port of Caraquet, availing themselves of the advantages of their position, have actually produced a large proportion of the dried cod exported from the colony for some years. These four counties are more remote from the capital of New Brunswick, and from the markets of the United States, than the county of Charlotte, which embraces Grand Menan, and the other islands in the Bay of Fundy, (where the fish are so badly cured,) and the attention of the people is divided between several branches of industry; but fishing, as an occasional and irregular employment merely, has commonly proved a source of profit, or at least has afforded a fair reward for the labor and capital devoted to it. The fish shipped at Caraquet are in much better repute than those caught in the Bay of Fundy, and the remark is true of the produce of the Bay of Chaleurs and St. Lawrence fisheries generally. It may be presumed that *there* the herring does not "become rotten before salting;" that, when sold as the "gibbed" article, it is not packed without taking out the entrails; and that the cod *is* washed after being split, and *not* "salted and put in 'kinch' in all its blood and dirt."

This brief notice of the fisheries of New Brunswick would be incomplete without a description of the boat-fisherman of the Bay of Fundy, whose professional faults I have so severely rebuked. Bred to the use of boats from his earliest youth, he displays astonishing skill in their management, and great boldness in his adventures. He will cross, in the stormiest weather, from island to island, and go from passage to passage, through frightful whirls of tides, which suddenly meet and part with a loud roar;\* and he will dive headlong, as it were, upon rocks and bars, merely to show how easily he can shun them, or how readily and certainly he can "go about" and "stand off on the other tack."† He is neither a landsman nor a seaman, a soldier nor a marine; but you would think by his talk that he could appear to advantage in either of these characters. He is neither a merchant nor a mechanic, and yet he can buy and sell, mend and make, as expertly as either. In the healing art he is wise above all others, and fancies that he possesses a sovereign specific for every ailment which all the world beside considers as incurable. He holds nautical instruments in high derision: for the state of the moon and the weather predictions of the almanac, the peculiar sound of the sea when it "moans," and the particular size or shape of a "cat's paw" or "glin" in the sky, lead him to far surer results. He will undertake nothing of consequence upon a

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\* The ordinary rise and fall of the tide is twenty-two feet. The rapidity with which it rushes by the points of land, and through the narrow straits between the islands, creates dangerous cross-tides, eddies, and whirlpools.

† In returning from a cruise to the coast, says the author of "Eothen," "You see often enough a fisherman's humble boat far away from all shores, with an ugly black sky above, and an angry sea beneath; you watch the grisly old man at the helm, carrying his craft with strange skill through the turmoil of waters, and the boy, supple-limbed, yet weather-worn already, and with steady eyes that look through the blast, you see him—understanding commandments from the jerk of his father's white eye-brow—now belaying, and now letting go—now scrunching himself down into mere ballast, or baling out death with a pipkin. Stale enough is the sight; and yet when I see it I always stare anew, and with a kind of Titanic exultation, because that a poor boat, with the brain of a man and the hands of a boy on board, can match herself so bravely against black heaven and ocean," &c.

Friday, and can prove by a hundred incidents how infallible are the signs and omens which he believes in. He thinks to die in his bed. True it is, that he has been upset; that his boat, loaded with fish to the "gunnel," has sunk under him, and that a vessel has run over him; but he is still alive, and "was not born to be drowned." His "fish stories" are without end. In politics, he goes for the largest liberty. He has never heard of easements and prescriptive rights; but he occupies at will both beach and upland, without any claim to either, and will browbeat the actual proprietor who has the temerity to remind him of their relative positions. Against speculators he wages perpetual war: why should he not? since it is they who put up the price of his favorite "flat-hooped, fine middlings flour," and put down the price of fish and "ile!"

And who shall do justice to his dress and to his professional gear? The garments which cover his upper and nether man he calls his *ile sute*. The queer-shaped thing worn upon his crown is a *sou'-wester*; or, if the humor takes him, a *north-easter*. He wears neither mittens nor gloves, but has a substitute which he has named *nippers*.

When he talks about *brush*, he means to speak of the matted and tangled mass which grows upon his head; or the long, red hair under his chin, which serves the purpose of a neckcloth; or of that in front of his ears, which renders him impervious to the dun of his merchant. His boots are *stampers*. Lest he should lose the movables about his person, he has them fastened to his pockets by *lannairds*. One of his knives is a *cut-throat*, and another is a *splitter*. His apron, of leather or canvass, is a *barvel*. The compartment of his boat into which he throws his fish as he catches them, is a *kid*. The state of the moon favorable for "driving herring," he calls *darks*. The bent-up iron hook which he uses to carry his burning torch on the herring-ground, is a *dragon*. The small net with an iron bow and wooden handle, is a *dip-net*, because it is with that that he dips out of the water the fish which his light attracts to the surface. His *set-net* is differently *hung*, and much larger; it has leads on its lower edge to sink it with in the water, and corks upon its upper edge, at regular intervals, to buoy it up and preserve it nearly in a perpendicular direction, so that the herrings may strike it and become entangled in its meshes.

Nor ends his dialect here. Chebacco-boats and small schooners are known to him as *pinkies*, *pogies*, and *jiggers*. He knows but little about the hours of the day and night; everything with him is reckoned by the *tide*. Thus, if you ask him what time he was married, he will answer, "On the young flood last night;" and he will tell you that he saw a certain man this morning about "low-water slack;" or, as the case may be, "just at half-flood," "as the tide turned," or "two hours to low water." If he speaks of the length of line required on the different fishing-grounds, he will compute by "*shots*;" and by a *shot* he means thirty fathoms. If he have fish to sell, and is questioned as to their size, he will reply that they are "*two-quintal*" fish, by which he means that fifty will weigh one hundred and twelve pounds.

He is kind and hospitable in his way; and the visitor who is treated to *fresh smother*, *duff*, and *jo-floggers*,\* may regard himself as a decided favorite. He believes in witches and in dreams. The famous pirate

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\* Potpie of sea-birds, pudding, and pancakes—the fisherman's three P.'s



Kyd buried gold and treasures in Money Cove,\* Grand Menan, he is sure; and he has dug for it many a time. His "woman" is the "best," the harbor he lives in is "the safest;" and his boat is "the fastest and will carry sail the longest." When determined upon going home, whether he is upon the land or the sea, he says, "Well, I'll up *killock* and be off."

The man I have described is no countryman of ours, and was to be seen playing the soldier on the easterly side of the St. Croix during the recent very wordy but bloodless war on the Aroostook, which was terminated by the treaty of Washington. But *some* of his qualities of character, and forms of speech, are common to most of the class to which he belongs; and the nets, knives, and other gear, are in general use.

*Statistics of the fisheries of the Bay of Fundy for the year 1850.*

Places.	Vessels.			Men.	Cod and pollock.	Cod and haddock.	Oil.	Herring, smoked.	Herring, pickled.	Mackerel caught.	Value, New Brunswick currency.	Value in dollars.
	No.	No.	No.	No.	Quintals.	Bbls.	Bbls.	Boxes.	Bbls.	Bbls.		
Grand Menan and the islands adjacent.....	24	94	27	394	10,500	250	180	35,000	6,500	.....	£11,000	\$44,000
Campo Bello.....	11	50	21	252	7,090	150	120	40,000	5,100	480	9,825	39,300
West isles and parishes of St. George and Penfield.....	27	200	7	691	24,550	.....	450	5,000	3,500	.....	12,254	49,016
	62	344	55	1,337	42,140	1,200	750	80,000	15,100	480	33,079	132,316

*Statistics of the fisheries of New Brunswick—value of produce exported.*

Years.	Cod.	Salmon.	Herring.	Mackerel.	Alewives.	Oil.	Total.	Total dollars.
1832.....	£28,231	£2,488	£1,032	£212	£290	£1,058	£33,291	\$133,164
1833.....	27,536	723	318	91	325	2,290	31,283	125,132
1834.....	46,337	2,397	489	382	.....	1,560	51,165	204,660

\* So called from the popular belief that Captain Kyd buried two hogsheads of treasure there.

Statistics of the fisheries of New Brunswick—various produce, and quantities of each, exported.

Years.	Quintals of dried cod.	Barrels of pickled cod.	Barrels of pickled herrings.	Boxes of smoked herrings.	Barrels of pickled salmon.	Kits of pickled salmon.	Gallons of fish-oil.	Barrels of pickled alcwives.	Value.
1819.	40,073	-----	11,436	-----	362	-----	15,690	-----	-----
1820.	49,063	-----	6,243	-----	-----	-----	16,920	-----	-----
1821.	45,895	-----	12,508	-----	-----	-----	13,540	-----	-----
1822.	22,067	7,385	-----	548	-----	2,271	5,580	-----	-----
1823.	14,260	8,712	-----	6,861	-----	-----	5,580	-----	-----
1824.	18,165	11,006	-----	5,436	-----	-----	5,040	-----	-----
1825.	29,490	9,514	-----	7,030	-----	-----	12,080	-----	-----
1826.	21,422	12,844	-----	8,271	-----	-----	2,739	-----	-----
1827.	4,680	10,948	-----	8,204	504	2,692	16,380	-----	-----
1828.	16,651	2,710	9,282	4,946	295	1,725	10,020	-----	-----
1829.	16,907	2,209	12,409	5,180	489	2,721	7,320	-----	\$137 930
1830.	18,442	2,109	3,286	600	1,776	2,435	9,180	-----	-----
1831.	17,865	2,215	22,917	9,138	1,199	2,597	6,000	-----	-----
1832.	18,502	1,877	18,335	14,167	692	2,947	6,695	-----	133,160
1833.	20,224	25,187	-----	10,604	652	2,151	40,976	-----	-----
1834.	20,441	30,451	-----	3,761	160	1,965	48,292	-----	-----
1835.	21,786	3,199	25,013	5,483	88	5,278	141,183	-----	-----
1836.	27,543	2,802	17,790	5,880	30	4,650	77,935	-----	-----
1837.	27,434	3,497	1,109	11,915	1,843	1,120	210,807	9,198	-----
1838.	14,950	4,651	3,540	14,135	930	8,261	233,950	7,214	200,405
1839.	23,594	1,410	6,075	13,439	1,400	5,600	106,230	7,729	-----
1840.	16,832	361	1,435	22,325	1,804	2,276	162,317	5,755	-----
1841.	13,567	459	1,850	19,534	1,825	2,653	119,936	7,121	-----
1842.	15,636	372	1,610	7,209	2,879	1,232	4,383	9,889	-----
1843.	11,320	376	1,058	5,389	2,155	855	86,623	12,169	98,285
1844.	12,405	246	1,754	7,308	2,479	6,419	5,989	16,229	-----
1845.	8,842	595	5,264	10,058	2,621	1,261	78,921	9,551	-----
1846.	13,030	241	3,169	15,379	1,311	1,529	60,935	10,438	-----
1847.	13,037	1,001	3,059	11,848	2,426	170	3,479	12,999	-----
1848.	17,973	910	1,683	6,423	2,175	-----	4,707	9,093	126,130
1849.	18,192	-----	-----	13,739	-----	-----	8,507	10,236	-----

SALMON FISHERY OF BRITISH AMERICA.

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PART III.—UNITED STATES.

PLYMOUTH COLONY.

From 1620 until the union with Massachusetts by the charter of William and Mary, 1692.

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MAINE.

From 1607 to the Revolutionary Controversy.

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NEW HAMPSHIRE.

From 1623 to the Revolutionary Controversy.

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## ISLES OF SHOALS.

*From 1614 to the Revolutionary Controversy.*

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## MASSACHUSETTS.

*From 1614 to the Revolutionary Controversy.*

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## NEW ENGLAND.

*From the commencement of the Revolutionary Controversy to the Declaration of Independence.*

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## THE UNITED STATES.

*From the Declaration of Independence to the year 1852.*

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## THE MACKEREL FISHERY.

*From the settlement of New England to the year 1852.*

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## THE HERRING FISHERY.

*From its commencement to the year 1852.*

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## THE HALIBUT FISHERY.

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PART IV.—HISTORICAL VIEW OF THE CONTROVERSY AS TO THE INTENT AND MEANING OF THE FIRST ARTICLE OF THE CONVENTION OF 1818.

The documents submitted by the President, in answer to the resolution of the Senate of July 23, 1852, embracing as they do the able and spirited defence of our rights, by Mr. Everett, never before published, as well as several other papers of interest, afford much valuable information. But yet, it is apparent that our archives are singularly deficient in documentary evidence to show both sides of the controversy as it really exists. We have already seen that the loyalists, or "tories," opposed *any* stipulations whatever, at the peace of 1783, and we are now to find that the principal cause of our difficulties since that

time—whether past or present—on the question of the fisheries, is to be traced to the same source.

At the close of the Revolution, justice and good policy both required of our fathers a general amnesty, and the revocation of the laws of disability and banishment; so that *all* adherents of the crown who desired, might become American citizens. Instead of this, however, the State legislatures, generally, continued in a course of hostile action, and treated the conscientious and the pure, and the unprincipled and corrupt, with the same indiscrimination as they had done during the struggle. The tories were ruined and humble men. Most of them would have easily fallen into respect for the new state of things, old friendships and intimacies would have been revived, and long before this time all would have mingled in one mass; but in some parts of the United States there seems to have been a determination to drive them from the country at all hazards, as men undeserving of human sympathy. Eventually, popular indignation diminished; the statute-book was divested of its most objectionable enactments, and numbers were permitted to occupy their old homes, and to recover the whole or a part of their property; but by far the greater part of the loyalists, who quitted the thirteen States at the commencement of or during the war, never returned; and of the many thousands who abandoned their native land at the peace, and while these enactments were in force, few, comparatively, had the wish, or even the means, to revisit the country from which they were expelled. It cannot be denied, and we of this generation should admit, that our fathers dealt harshly with many, and unjustly with some, of their opponents. Indeed, whoever visits the British colonies will be convinced that persons were doomed to misery who were as true in heart and hope as was Washington himself; that, in the divisions of families which everywhere occurred, and which formed one of the most distressing circumstances of the conflict, there were wives and daughters who, although bound to loyalists by the holiest ties, had given their sympathies to the whigs from the beginning, and who, in the triumph of the cause which had had their prayers, went meekly—as woman ever meets a sorrowful lot—into hopeless, interminable exile. It is to be lamented that better counsels did not prevail. Had New York, Massachusetts, and Virginia especially, been either merciful or just, transactions which, in ages to come, will be very likely to put us on our defence, would not stain our annals. The example of South Carolina should have been followed by all. As it was, whigs whose gallantry in the field, whose prudence in the cabinet, and whose exertions in diplomatic stations abroad, had contributed essentially to the success of the conflict, were regarded with enmity on account of their attempts to produce a better state of feeling and more humane legislation.

As a matter of expediency, how unwise was it to continue to perpetuate the opponents of the Revolution, and to keep them a distinct class, for a time, and for harm yet unknown! How ill-judged the measures that caused them to settle the hitherto neglected possessions of the British crown! Nova Scotia had been won and lost, and lost and won, in the wars between France and England, and the blood of New England had been poured upon its soil like water; but when we drove thousands and tens of thousands of our countrymen to seek a refuge there, what was it? Before the war, the fisheries of its coast—for the prosecution of which Halifax itself was founded—comprised, in



public estimation, its chief value; and though Great Britain had quietly possessed it for about seventy years, the emigration to it of loyalists from the United States, in a single year, more than doubled its population. By causing the expatriation, then, of the adherents of the British crown, among whom were the well-educated, the ambitious, and the well-versed in politics, we became the founders of two British colonies, for it is to be remembered that New Brunswick formed a part of Nova Scotia until 1784, and that the necessity of the division then made was of our own creation. In like manner, we became the founders of Upper Canada. The loyalists of our Revolution were the first settlers of the territory thus denominated by the act of 1791;\* and the principal object of the line of division of Canada, as established by Mr. Pitt's act, was to place them, as a body, by themselves, and to allow them to be governed by laws more congenial than those which were deemed requisite for the subordination of the French on the St. Lawrence. The government for which they had become exiles was liberal to them; it gave them lands, tools, materials for buildings, and means of subsistence for two years, and to each of their children (at the age of twenty-one) two hundred acres of land. And besides this, of the offices created by the organization of a new colonial government, they were the chief recipients.

Should it be replied that Nova Scotia, New Brunswick, and Canada West, without accessions from the United States, would have risen to importance ere this, I answer, that there is good reason to doubt it; because, in the first place, of the many thousands who annually come from Europe to America, but a small proportion land on the shores of these colonies, and because the most of those who do, soon leave for "the States," notwithstanding the inducements held out to emigrants by the colonial and home governments to settle on the territories of the crown. But were it otherwise, the force of the remark is in no degree diminished, for the obvious reason, that, had we pursued a wise course at the peace of '83, people of American origin would not have become our rivals in ship-building, in the carriage of our great staples to Europe, in the prosecution of the fisheries, and in the production of wheat and other breadstuffs. Nor is this all. We should not have had the hatred, the influence, and the talents of persons of loyalist descent, to contend against, in the long and vexed controversy relative to our northeastern boundary, nor continual difficulty about, and upon, the fishing grounds. It is to be observed, moreover, that the operation of these causes has been, and will continue to be, no slight obstacle in the way of adjusting such questions, since the children and kinsmen of the loyalists have no inconsiderable share in determining colonial councils, and in the shaping of remonstrances and representations to the British ministry. And whoever takes into view the fact that the sufferings and sacrifices of the fathers are well remembered by the descendants, and that, under the monarchical form, hereditary descent of official station is very common, will agree with me in the belief, that evils from this source are far from being at an end. There are still those in the colonies, who, remembering only that they are de-

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\*It was in a debate on this bill, that Fox and Burke severed the ties of friendship which had existed between them for a long period. The scene was one of the most interesting that had ever occurred in the House of Commons. Fox, overcome by his emotions, wept aloud. Burke's previous course with regard to the French revolution had rendered a rupture at some time probable, perhaps certain.

sceded from the exiled losers in the revolutionary strife, would keep alive, and perpetuate for generations to come, the dissensions of the past; but their number, we may hope, is rapidly diminishing. To extend and strengthen the sympathies of human brotherhood is a Christian duty; and to unite kinsmen, who were severed by events which dismembered an empire, is a work in which all may *now* engage, without incurring the reproach of disloyalty on the one hand, or of the want of patriotism on the other.

These remarks explain, and account for, the pertinacity of the colonists, and serve to indicate that *they*, and not the British government, are the real party opposed to us in this controversy. As we progress in our inquiries, we shall find abundant evidence to show, that England has moved with great, with avowed reluctance, against us; and that while the colonies of Canada, Prince Edward Island, and New Brunswick, have remained almost indifferent, down to a very recent day, Nova Scotia, on the contrary, has pressed the subject of "American aggressions" upon the attention of the ministry, with hardly an intermission, for a term of years. The last named colony, it may be pertinent to observe, maintains extreme opinions upon *all* political questions, demanding concessions and privileges entirely inconsistent with colonial dependence, and asserting and insisting on doctrines which no whig of our Revolution, in his loftiest mood, even so much as wrote or spoke to his most cherished friend; as the letters of the Hon. Joseph Howe to Lord John Russell, in 1846, and the course of the "Liberals," generally, prove beyond dispute.

Some well-informed persons have expressed the opinion, that, until within a few years, our fishermen have had no cause to complain of their colonial competitors. It is not so. Those who consult our state papers will find, that, as early as 1806, the inhabitants of the counties of Barnstable and Plymouth, Massachusetts, who stated that they procured their livelihood by fishing, memorialised Congress on the subject of existing grievances, and desired redress. They represented that they were much injured in the sale of their fish in consequence of the American market being glutted with English fish; that they were fired upon and brought to by English cruisers when falling in with them in going to, and coming from, the fishing grounds; that they were imposed upon; that they were compelled to pay light-money if they passed through the Strait of Canso; that their men were imprisoned; and that if they anchored in the colonial harbors, they were compelled to pay anchorage money. Thus the complaints in 1806 were nearly identical with those in 1852.

In the year 1807 the colonists appealed to the British government on the subject of the fisheries within colonial jurisdiction, and the "aggressions" of their republican neighbors. Looking with jealous eyes upon the extent of our adventures to their waters, they employed a watchman to count the number of American vessels which passed through the Strait of Canso in a season. This watchman reported that he saw nine hundred and thirty-eight. As many passed in fogs, and in the night-time, and were unseen by him, the whole number was not less, probably, than thirteen hundred. Without enumerating other acts of the colonists which show their hostile feelings towards us, I will barely add that many of them preferred that the difficulties then pending between England and the United States should terminate in a war; for, as was believed and said, a war would put an end to our



rights of fishing in British America, inasmuch as it would annul the stipulations of the treaty of 1783.\*

The event which so many of our banished countrymen anticipated with complacency, occurred in 1812. In the year following, a determination was manifested to exclude us from the colonial fishing-grounds on the return of peace. It was represented in memorials, that the American fishermen abused their privileges to the injury of his Majesty's subjects; that the existence of Great Britain as a power of the first rank, depended mainly upon her sovereignty of the seas; and that sound policy required the exclusion of both France and the United States from any participation in the fisheries.\* It was, furthermore, insisted that fifteen hundred American vessels had been engaged in the Labrador fishery alone, in a single season; that these vessels carried and dealt out teas, coffee, spirits, and other articles, on which no duty was paid; that these smugglers and interlopers exercised a ruinous influence upon the British fishery and the morals of British fishermen; that men, provisions, and outfits were cheaper in the United States than elsewhere, and that of consequence British fishermen on the coast could buy what they needed on better terms of the American vessels than of the colonial merchants; and hence the memorialists expressed the hope that foreigners would no longer be permitted to visit the colonial waters for the purpose of fishing. These representations created a sensation in Massachusetts, and were the topic of comment there and in other parts of the country. The Boston Centinel pithily said, that they were "*alarmingly interesting*," and as far south as Baltimore the New England sentiment of "*no peace without the fisheries*," was echoed and approved.

In 1814, Mr. Canning, in the British Parliament, urged upon the government the necessity of giving due consideration to the question of the fisheries, in the adjustment of terms of peace. In our treaty of 1783, said he, "we gave away more than we ought; and we never now hear of that treaty but as a trophy of victory on the one hand, or the monument of degradation and shame on the other. We ought to refer, in questions with America, to the state in which we now stand, rather than that in which we once stood."

The principle asserted by the American commissioners at Ghent, Mr. Russell alone excepted, has been stated and need not be repeated here. It was assumed in England, and in the colonies, that that principle was in contravention of public law, and British statesmen and British colonists claimed to exclude our vessels from the fishing-grounds, and

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\*A highly respectable gentleman, of loyalist descent, related to me the following incident, which will serve to illustrate the temper of the time: "I went," said he, "to see my uncle, who, as I entered the house, accosted me thus, in great glee: 'Well, Willie, there'll be war, and I shall die on the old farm after all.' 'How so?' rejoined my informant. 'How does it follow that, if a war really occurs, you will die on the old farm?' 'How!' petulantly replied the uncle; '*why, won't England whip the blasted rebels, and shan't we all get our lands back again?*'" This loyal old gentleman is now dead. He was a native of New York, and lost his property—the "old farm"—under the Confiscation act of that State. At the close of the Revolution he settled on the British side of the St. Croix, where many persons of his lineage still live. This is by no means a solitary instance of the hopes entertained as to the result of a conflict between the two nations. In 1807 many of our banished countrymen were not only alive, but in full vigor; and the expectation was common among them that, in the event of hostilities, their interest would be promoted, either by stipulations in their favor in the treaty of peace, or by the abrogation of our fishing rights, as stated in the text.

even to seize them when found there. The government of Nova Scotia was especially zealous and prompt in protecting her supposed interests, and in proclaiming the penalty of confiscation to American intruders upon her coasts. In 1815 the commander of his Majesty's ship-of-war the *Jasseur*, heeding the clamors of the colonists more than the qualified instructions of the admiralty, commenced the seizure of our fishing vessels; and in one day in June of that year, sent no less than eight into the port of Halifax as lawful prizes. This outrage, and the right assumed by the commander of this ship to warn our fishermen not to come within sixty miles of the coast, (as elsewhere remarked,) led to negotiations and to the convention of 1818. Mr. Baker, the British chargé d'affaires, in reply to Mr. Monroe's note of July 18, 1815, declared that the commander of the *Jasseur* had transcended his authority, and gave the assurance that orders had been transmitted to the naval officers on the Halifax and Newfoundland stations, which would "prevent the recurrence of any similar interruption;" but the schooner *Nabby* was seized by his Majesty's ship *Saracen*, Captain Gore, and proceedings in the admiralty court of Nova Scotia were instituted against her in August, 1818, only two months before the convention was concluded. Eleven other American vessels were seized by Captain Chambers, under orders from Admiral Milne, for alleged violations of British maritime jurisdiction. That some of these vessels were captured for good cause, is quite probable; but yet, the comity between nations, aside from the assurance of the British chargé d'affaires, required that while negotiations were pending, the officers of the British navy on the American station should have been instructed to suspend captures, and to have merely warned off such vessels as were found infringing upon what were held to be British rights; for it is to be recollected that, claiming, as we did, to fish under the treaty of 1783, we were entitled essentially to exercise *all* the privileges of *catching* enjoyed by British subjects, until the differences between the two cabinets were adjusted.

On the 14th of June, 1819, Parliament passed "An act to enable his Majesty to make regulations with respect to the taking and curing fish on certain parts of the coasts of Newfoundland, Labrador, and his Majesty's other possessions in *North America*, according to a convention made between his Majesty and the United States of America."

It is now pretended that this law asserts the recent construction of the convention, as relates to our exclusion from the great "*bays*." That pretension will be examined in due time. The act, after reciting the first article of the convention, provides, first, that "it shall and may be lawful for his Majesty, by and with the advice of his Majesty's privy council, by any order, or order in council, to be from time to time made for that purpose, to make such regulations, and to give such directions, orders, and instructions to the governor of *Newfoundland*, or to any officer or officers on that station, or to any other person or persons, whomsoever, as shall or may be from time to time deemed proper and necessary for the carrying into effect the purposes of the said convention, with relation to the taking, drying, and curing of fish by inhabitants of the United States of *America*, in common with *British* subjects, within the limits set forth in the said article of the said convention, and hereinbefore recited; any act or acts of Parliament, or any law, custom, or usage, to the contrary in any wise notwithstanding."



Second, that "it shall not be lawful for any person or persons, not being a natural-born subject of his Majesty, in any foreign ship, vessel, or boat, nor for any person in any ship, vessel, or boat, other than such as shall be navigated according to the laws of the United Kingdom of *Great Britain and Ireland*, to fish for or take, dry, or cure, any fish of any kind whatever, within three marine miles of any coasts, bays, creeks, or harbors whatever, in any port of his Majesty's dominions in *America*, not included within the limits specified and described in the first article of the said convention, and hereinbefore recited; and that if any such foreign ship, vessel, or boat, or any persons on board thereof, shall be found fishing, or to have been fishing, or preparing to fish within such distance of such coasts, bays, creeks, or harbors, within such parts of his Majesty's dominions in *America*, out of the said limits as aforesaid, all such ships, vessels, and boats, together with their cargoes, and all guns, ammunition, tackle, apparel, furniture, and stores, shall be forfeited."

Third, that "it shall and may be lawful for any fisherman of the said United States to enter into any such bays or harbors of his Britannic Majesty's dominions in *America* as are last mentioned, for the purpose of shelter and repairing damages therein, and of purchasing wood and of obtaining water, and for no other purpose whatever—subject, nevertheless, to such restrictions as may be necessary to prevent such fishermen of the said United States from taking, drying or curing fish in the said bays or harbors, or in any other manner whatever abusing the said privileges by the said treaty and by this act reserved to them, and as shall for that purpose be imposed by any order or orders to be from time to time made by his Majesty in council, under the authority of this act, and by any regulations which shall be issued by the governor, or person exercising the office of governor, in any such parts of his Majesty's dominions in *America*, under or in pursuance of any such order in council, as aforesaid."

Fourth, that "if any person or persons, upon requisition made by the governor of Newfoundland, or the person exercising the office of governor, or by any governor, or person exercising the office of governor, in any other parts of his Majesty's dominions in *America* as aforesaid, or by any officer or officers acting under such governor, or person exercising the office of governor, in the execution of any orders and instructions from his Majesty in council, shall refuse to depart from such bays or harbors; or if any person or persons shall refuse or neglect to conform to any regulations or directions which shall be made or given for the execution of any of the purposes of this act; every such person so refusing or otherwise offending against this act shall forfeit the sum of two hundred pounds."

Reserving comments upon this statute for another place, we proceed with our narrative. The four years succeeding the ratification of the convention, were years of comparative quiet and security. But in 1823, the ships-of-war *Argus*\* and *Sparrow-hawk* spread alarm among our fishermen who were employed in the Bay of Fundy, and elsewhere in the waters of Nova Scotia and New Brunswick. They molested some, and ruined the voyages of others; but the *Charles* of York, Maine—a prize to the *Argus*—is believed to be the only vessel captured and sent into port for trial.

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\* Formerly of the United States navy, and captured in the war of 1812.

In 1824, Captain Hoare, of his Majesty's brig *Dötterel*, seized nine vessels.\* The conduct of this gentleman caused much excitement and indignation. I personally witnessed many of his proceedings. However censurable his general course, it is not remembered that he disturbed the humble men who fish in small open boats in the Bay of Passamaquoddy, and in waters always considered free and common to the people of the two flags. Of the vessels which he captured, one was retaken by her crew, assisted by one of his own men; and two others were rescued by their crews, aided by an armed party from Eastport.

In September, three memorials, signed by citizens of Maine who were aggrieved by the acts of Captain Hoare, were transmitted to the President. These papers, with the accompanying protests and depositions as to the wrongs complained of, formed the subject of a correspondence between the Acting Secretary of State and the British chargé d'affaires. No results followed. Our countrymen demanded indemnity and reparation. The British functionary required, on the other hand, "the punishment of the transgressors for the act of violence perpetrated on persons bearing his Majesty's commission while engaged in the discharge of their public duties." Meantime, the President directed Ether Shepley, the attorney of the United States for Maine, to proceed to the frontier and make inquiry into the circumstances of the matters in dispute, and especially those attending the recapture of the three vessels just referred to. That Captain Hoare was sometimes unjustly reproached by our fishermen, was admitted by the calm and considerate in 1824; and this fact, in common fairness, ought to be stated in this brief record of the troubles which are connected with his command of the *Dotterel*, and which will not soon be forgotten by those who live on the eastern border of Maine. The charge preferred against him that he converted the vessels which he seized into tenders for assisting him in his operations "prior to their adjudication in the courts," he denied in the most explicit terms. It was never proved to be true. It may be said, also, that the capture of seven of his prizes was held to be justifiable by the British chargé d'affaires in his correspondence with Mr. Adams. The accuracy of this opinion, however, we shall have occasion to dispute.

The excitement occasioned by the zeal with which Captain Hoare "guarded the coasts from the intrusion of foreign fishermen and smugglers," did not suddenly cease. In 1825, his conduct, on motion of the Hon. Jeremiah O'Brien, who represented the frontier district of Maine, became a subject of inquiry in Congress; and the United States schooner *Porpoise*, under the command of Lieutenant Parker, was despatched to the Bay of Fundy for the protection of our flag.

Early in 1826, the *Dotterel* was again the terror of our fishermen. The presence of the United States sloop-of-war *Lexington*, Captain Shubrick, under orders to cruise upon the fishing grounds, relieved their fears; and the season passed away without any serious disturbance. But there had been no adjustment of the difficulties which occurred in 1824. The note of the British chargé d'affaires to our government, relative to the recapture of two of the *Dotterel's* prizes, had not, in fact, been answered. Meantime, Mr. Adams had passed

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\* The documents submitted to the Senate by the President, August, 1852, contain several papers connected with matters in the Bay of Fundy at this period.



from the Department of State to the Executive Mansion. Mr. Clay had succeeded him; and a new British minister had arrived in the United States to treat with the new administration. To have delayed a reply to that note for a year and a half, was equivalent to a refusal; and it could hardly be hoped by Mr. Vaughan, that Mr. Adams would permit, as President, what he had declined as Secretary of State. Yet, on the 29th of April, that functionary called the attention of Mr. Clay to the fact that his predecessor, on the fifth of October, 1824, had informed our government "that an outrage had been committed by some armed citizens of the State of Maine, in forcibly rescuing, off Eastport, two American vessels, the Reindeer and Ruby, which had been captured by his Majesty's cruisers while fishing in the Bay of Fundy in places where the United States had by treaty renounced the right so to do;" and in renewing the request "for an acknowledgment of the improper conduct of the persons engaged in" the enterprise, he remarked that "the British government was disposed to waive all demand for the punishment of the offenders, as the act resulted apparently from unpremeditated violence."

It does not appear that Mr. Clay ever replied to this letter, or that the required "acknowledgment" was ever made in any form.

The naval and diplomatic officers of his Majesty attached far more importance to this affair than it deserved. Admiral Lake stated, and the British chargé d'affaires repeated to Mr. Adams, that the Reindeer and Ruby were rescued "by two schooners and an open boat, under American colors, full of armed men, with muskets and fixed bayonets, amounting to about one hundred, headed by a Mr. Howard,\* of Eastport, who is said to be a captain in the United States militia." But the truth is, that "Mr. Howard" was a mere stripling, and a merchant's apprentice. I was a witness to the whole affray. The two vessels in question were partly owned by young Howard's employers. As they hove in sight under charge of Captain Hoare's prize-masters, a party of some thirty persons, many of whom were boys, and without "muskets" or weapons of any sort, were hastily collected and embarked. The deed was bravely done, and at the moment won the plaudits of grave men. Persons of mature years who deliberately arm themselves to expound treaty stipulations, are not to be justified; but the acts of generous, impulsive youth, admit of apology and extenuation.

The period of quiet which followed the transactions last noticed indicates that Captain Hoare was too zealous, or that his successors were remiss in the performance of their duty, or that the masters of our fishing vessels suddenly reformed their practices, and conformed to the provisions of the convention. In January, 1836, Mr. Bankhead, the British chargé d'affaires, at the instance of the colonial authorities, called the attention of Mr. Forsyth, Secretary of State, to "*repeated acts of irregularity committed by fishermen of the United States;*" but the papers which accompanied his note specify the encroachments of a *single* vessel only—namely, the schooner Bethel, of Provincetown, Massachusetts. Still, the President, "without waiting for an examination of the general complaint," or that of the solitary instance cited, "directed the Secretary of the Treasury to instruct

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\* William A. Howard, subsequently a midshipman in the United States navy, and a captain in the revenue service. He was in command of the steam cutter *McLane* at the attack on Vera Cruz, during the late war with Mexico.

the collectors to inform the masters, owners, and others engaged in the fisheries, that complaints have been made, and to enjoin upon those persons a strict observance of the limits assigned for taking, drying, and curing fish by the American fishermen, under the convention of 1818."

In March, of the same year, an act was passed by Nova Scotia of extreme, and, in some of its provisions, of inexcusable severity. It provides (among other things not material to our present purpose)—

That "officers of the colonial revenue, sheriffs, magistrates, and any other person duly commissioned for that purpose, may go on board any vessel or boat within any harbor in the province, or hovering within three miles of any of the coasts or harbors thereof, and stay on board so long as she may remain within such place or distance."

That "if such vessel or boat be bound elsewhere, and shall continue within such harbor or so hovering for twenty-four hours after the master shall have been required to depart, any one of the officers above mentioned may bring such vessel or boat into port and search her cargo, and also examine the master upon oath, and if the master or person in command shall not truly answer the questions demanded of him in such examination, he shall forfeit one hundred pounds; and if there be any prohibited goods on board, then such vessel or boat, and the cargo thereof, shall be forfeited."

That "if the vessel or boat shall be foreign, and not navigated according to the laws of Great Britain and Ireland, and shall have been found fishing, or preparing to fish, or to have been fishing, within three marine miles of such coasts or harbors, such vessel or boat and the cargo shall be forfeited."

That "if any seizure take place and a dispute arise, the proof touching the illegality thereof shall be upon the owner or claimant."

That "no person shall enter a claim to anything seized until security shall have been given, in a penalty not exceeding sixty pounds, to answer and pay costs occasioned by such claim; and in default of such security, the things seized shall be adjudged forfeited and shall be condemned."

That "no writ shall be sued out against any officer or other person authorized to seize for anything done until one month after notice in writing, delivered to him or left at his usual place of abode by the person intending to sue out such writ, his attorney or agent, in which notice shall be contained the cause of action, the name and place of abode of the person who is to bring the action, and of his attorney or agent; and no evidence of any cause of action shall be produced, except such as shall be contained in such notice."

That "every such action shall be brought within three months after the cause thereof has arisen."

That "if on any information or suit brought to trial on account of any seizure, judgment shall be given for the claimant, and the judge or court shall certify on the record that there was probable cause of seizure, the claimant shall not recover costs, nor shall the person who made the seizure be liable to any indictment or suit on account thereof. And if any suit or prosecution be brought against any person on account of such seizure, and judgment shall be given against him, and the judge or court shall certify that there was probable cause for the seizure, then the plaintiff, besides the thing seized or its value, shall



not recover more than twopence damages, nor any costs of suit, nor shall the defendant be fined more than one shilling."

That "the seizing officer may, within one month after notice of action received, tender amends to the party complaining, or his attorney or agent, and plead such tender."

That "all actions for the recovery of penalties or forfeitures imposed must be commenced within three years after the offence committed."

And that "no appeal shall be prosecuted from any decree or sentence of any court in this province touching any penalty or forfeiture, unless the inhibition be applied for and decreed within twelve months from the decree or sentence being pronounced."

The next measure of Nova Scotia was in 1837, when an elaborate report on the subject of the fisheries was submitted to the House of Assembly, which embraced a plan of protection by the employment of steamers on the part of the home government, and of a preventive force on the part of the government of the colony. The latter recommendation was adopted.

But the design of committing the ministry to the plans of political leaders in this *loyal* possession of the British crown was not abandoned. Early in 1838 a joint address of the Legislative Council and House of Assembly was transmitted to the Queen, complaining of the habitual violation of the convention of 1818 by American citizens, and praying for an additional naval force to put an end to these aggressions. In November, of that year, Lord Glenelg, the colonial secretary, in a despatch to Lieutenant General Sir Colin Campbell, lieutenant governor of Nova Scotia, remarked, in reply to this address, that—

"In obedience to her Majesty's commands, this subject has engaged the serious attention of her Majesty's government, and it has been determined for the future to station, during the fishing season, an armed force on the coast of Nova Scotia to enforce a more strict observance of the provisions of the treaty by American citizens, and her Majesty's minister at Washington has been instructed to invite the friendly co-operation of the American government for that purpose.

"The necessary directions having been conveyed to the lords commissioners of the admiralty, their lordships have issued orders to the naval commander-in-chief on the West Indian and North American station to detach, as soon as the fishing season shall commence, a small vessel to the coast of Nova Scotia, and another to Prince Edward Island, to protect the fisheries. The commanders of these vessels will be cautioned to take care that, while supporting the rights of British subjects, they do not themselves overstep the bounds of the treaty. You will of course afford them every information and assistance which they may require for the correct execution of this duty. I trust that measures will prove satisfactory to the legislature of Nova Scotia."

In March, 1839, the consul of the United States at Pictou addressed a letter to Mr. Forsyth, Secretary of State, in which, after referring to the seizure of several of our fishing vessels during the previous year, he said that—

"The British government has decided to send out two armed vessels, to be stationed during the fishing season on these coasts, for the purpose of preventing any infringements of the treaty; and although I am well aware that *much* of the outcry which has been made on this subject has had its origin in the disappointed feelings of Nova Scotia fishermen, on seeing themselves so far outstripped in the successful

pursuits of so valuable a branch of commerce by superior perseverance and skill of their enterprising neighbors, yet I know that, within my consular district, a tempting shoal of fish is sometimes, either from ignorance or the excitement of the moment, followed across the prescribed limits; and I suppose that during the ensuing season the greatest vigilance will be displayed in looking after offenders."

The seizures in the course of the year were numerous. The *Java*, *Battelle*, *Mayflower*, *Charles*, *Eliza*, *Shetland*, *Hyder Ally*, *Independence*, *Hart*, *Ocean*, *Director*, *Atlas*, *Magnolia*, *Amazon*, and *Three Brothers*, were among the number; whether for justifiable cause, will form the subject of inquiry in another place. Her Majesty's cruisers spread consternation on the fishing-grounds throughout the season. The Hon. Keith Stewart, in command of the *Ringdove*, was as much dreaded by our fishermen in the Bay of Fundy as Captain Hoare had been, in the *Dotterel*, in the year 1824. In July, a gentleman of one of the frontier ports of Maine informed an official personage at Washington that four or five hundred American fishing vessels were then in that bay; that the complaints of the colonists of the island of Grand Menan had caused the commanders of the British cruisers to refuse shelter to our flag even in stormy weather; that nearly one hundred of our vessels, which had been driven from positions secured to them by the treaty, had fled for refuge to a single harbor on the American side of the line; and that our fishermen were generally armed, and would not bear the indignities to which they were exposed. He added that "they can furnish some thousands of as fearless men as can be found anywhere, at short notice; and, unless our government send an armed vessel without delay, you will shortly hear of bloodshed." Such was the condition of things, now well remembered, at and near the border. Elsewhere there was so much difficulty and excitement that the masters of our vessels, whether at sea or at anchor, felt themselves unsafe; and, molested along the entire coast of Nova Scotia, many of them adjusted their affairs at the close of the season without reward for their toil and exposure, and in sadness of spirit as to the future. In a word, there seemed to persons of calm judgment a determination on the part of colonial politicians to drive our countrymen to extremities. To exclude us from the Bays of Fundy and Chaleurs, and other large bays, by lines drawn from headland to headland; to deny to us resort to the colonial ports and harbors for shelter and to procure wood and water, except in cases of actual distress; to dispute our right to fish on the shores of the Magdalene islands, and thus to render the treaty stipulation valueless; and to close against us the Strait of Canso, and of consequence to compel us to make the dangerous voyage round the island of Cape Breton, when bound to or from the Gulf of St. Lawrence, are among the pretensions of Nova Scotia seriously asserted in the memorable year 1839. The seizures of our vessels, and the other proceedings which we have briefly noticed, attracted the attention of our government, and the United States schooner *Grampus*, under the command of Lieutenant John S. Paine, was despatched to the scene of alarm and commotion. Lieutenant Paine informed himself of the matters in dispute, and performed his duty with zeal and efficiency. In his official report to Mr. Forsyth, Secretary of State, he observes that "the injustice and annoyance suffered by our fishermen had so irritated them, that there was ground to believe that violence would be resorted to, unless some understanding should be had before another season."



In March, 1840, the Assembly of Nova Scotia passed another address to the Queen, in which her Majesty was again reminded of the grievances of her subjects of that colony. Our government in the following month, and, as now appears, for the first time, communicated with our minister at the Court of St. James on the subject of the fisheries, but yet without instructions to make a statement of our wrongs to the government to which he was accredited.

The early part of the year 1841 is fruitful of events which show the progress of the controversy, and the development of colonial plans and pretensions. On the 20th of February, Mr. Forsyth, Secretary of State, addressed Mr. Stevenson, at London, a letter of definitive instructions, in which he reviewed the points in dispute, and stated that he was directed by the President to convey his desire that a representation should be made to her Majesty's government, immediately on receipt of the despatch, earnestly remonstrating "against the illegal and vexatious proceedings of the authorities of Nova Scotia towards our fishermen," and requesting of the ministry "that measures be forthwith adopted" to remedy "the evils arising out of this misconception on the part of the provincial" government, "and to prevent the possibility of the recurrence of similar acts." Mr. Stevenson's attention to the representations of Mr. Forsyth was prompt. On the 27th of March he wrote to Lord Palmerston as follows:

"The undersigned, Envoy Extraordinary and Minister Plenipotentiary from the United States, has the honor to acquaint Lord Viscount Palmerston, her Majesty's Principal Secretary of State for Foreign Affairs, that he has been instructed to bring to the notice of her Majesty's government, without delay, certain proceedings of the colonial authorities of Nova Scotia, in relation to the seizure and interruption of the vessels and citizens of the United States engaged in intercourse with the ports of Nova Scotia and the prosecution of the fisheries on its neighboring coasts, and which, in the opinion of the American government, demand the prompt interposition of her Majesty's government. For this purpose the undersigned takes leave to submit to Lord Palmerston the following representation:

"By the first article of the convention between Great Britain and the United States, signed at London on the 20th October, 1818, it is provided:

"1st. That the inhabitants of the United States shall have forever, in common with the subjects of Great Britain, the liberty to take fish of every kind on that part of the southern coast of Newfoundland which extends from Cape Ray to the Rameau islands, on the western and northern coast of Newfoundland, from the said Cape Ray to the Quirpon islands, on the shores of the Magdalene islands; and also on the coasts, bays, harbors, and creeks, from Mount Joly, on the southern coast of Labrador, to and through the Straits of Bellisle, and thence northwardly indefinitely along the coast, without prejudice, however, to the exclusive rights of the Hudson Bay Company.

"2d. That the Americans shall also have liberty, forever, to dry and cure fish in any part of the unsettled bays, harbors, and creeks, of the southern portion of the coast of Newfoundland before described, and of the coast of Labrador, the United States renouncing any liberty before enjoyed by their citizens to take the fish within three miles of any coasts, bays, creeks, or harbors of the British dominions in

America, not included within the above limits, *i. e.*, Newfoundland and Labrador.

"3d. That American fishermen shall also be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, and also of purchasing wood and obtaining water, under such restrictions only as might be *necessary to prevent their taking, drying or curing fish therein, or abusing the privileges reserved to them.* Such are the stipulations of the treaty, and they are believed to be too plain and explicit to leave room for doubt or misapprehension, or render the discussion of the respective rights of the two countries at this time necessary. Indeed, it does not appear that any conflicting question of right between them has as yet arisen out of the differences of opinion regarding the true intent and meaning of the treaty. It appears, however, that in the actual application of the provisions of the convention, (committed on the part of Great Britain to the hands of subordinate agents, subject to and controlled by local legislation,) difficulties, growing out of individual acts, have unfortunately sprung up, among the most important of which have been recent seizures of American vessels for supposed violations of the treaty. These have been made, it is believed, under color of a provincial law, (6th Wm. 4, chap. 8, 1836,) passed, doubtless, with a view to restrict vigorously, if not intended to aim a fatal blow at the fisheries of the United States on the coast of Newfoundland.

"It also appears, from information recently received by the government of the United States, that the provincial authorities assume a right to exclude the vessels of the United States from all their bays, (even including those of Fundy and Chaleur,) and likewise to prohibit their approach within three miles of a line drawn from *headland to headland, instead of from the indents of the shores* of the provinces! They also assert the right of excluding them from British ports, unless in actual distress, warning them to depart or get under weigh and leave harbor whenever the provincial custom-house or British naval officer shall suppose that they have remained there a reasonable time, and this without a full examination of the circumstances under which they may have entered the port. Now, the fishermen of the United States believe (if uniform practice is any evidence of correct construction) that they can, with propriety, take fish anywhere on the coasts of the British provinces, *if not nearer than three marine miles to land*, and have the right to their ports for shelter, wood and water; nor has this claim, it is believed, ever been seriously disputed, based, as it is, on the plain and obvious terms of the convention. Indeed, the main object of the treaty was not only to secure to American fishermen, in the pursuit of their employment, the right of fishing, but likewise to insure him as large a proportion of the conveniences afforded by the neighboring coasts of British settlements as might be reconcilable with just rights and interests of British subjects, and the due administration of her Majesty's dominions. The construction, therefore, which has been attempted to be put upon the stipulations of the treaty by the authorities of Nova Scotia, is directly in conflict with their object, and entirely subversive of the rights and interests of the citizens of the United States. It is one, moreover, which would lead to the abandonment, to a great extent, of a highly important branch of American industry, which could not for a moment be admitted by the government of the United States. The undersigned has also been instructed to acquaint



Lord Palmerston that the American government has received information, that in the House of Assembly in Nova Scotia, during the session of 1839-'40, an address to her Majesty was voted, suggesting the extension to adjoining British colonies of rules and regulations relating to the fisheries, similar to those in actual operation in that province, and which have proved so onerous to the fishermen of the United States; and that efforts, it is understood, are still making to induce the other colonies to unite with Nova Scotia in this restrictive system. Some of the provisions of her code are of the most extraordinary character. Among these is one which declares that any foreign vessel *preparing* to fish within three miles of the coast of any of her Majesty's dominions in America, shall, together with the cargo, be forfeited; that in all cases of seizure, the owner or claimant of the vessel, &c., shall be held to prove his innocence or pay treble costs; that he shall be forced to try his action within three months, and give one month's notice, at least to the seizing officer, containing everything to be proved against him, before any suit can be instituted; and also prove that the notice has been given. The seizing officer, moreover, is almost wholly irresponsible, inasmuch as he is liable to no prosecution, if the judge certifies that there is probable cause; and the plaintiff, if successful in his suit, is only to be entitled to *twopence* damages, without costs, and the defendant fined not more than *one shilling*. In short, some of these rules and regulations are violations of well established principles of the common law of England, and of the principles of the just laws of all civilized nations, and would seem to have been designed to enable her Majesty's authorities to seize and confiscate with impunity American vessels, and embezzle, indiscriminately, the property of American citizens employed in the fisheries on the coasts of the British provinces. It may be proper, also, on this occasion, to bring to the notice of her Majesty's government the assertion of the provincial legislature, 'that the Gut or Strait of Canso is a narrow strip of water completely within and dividing several counties of the province,' and that the use of it by the vessels and citizens of the United States is in violation of the treaty of 1818. This strait separates Nova Scotia from the island of Cape Breton, which was not annexed to the province until the year 1820. Prior to that, in 1818, Cape Breton was enjoying a government of its own entirely distinct from Nova Scotia, the strait forming the line of demarcation between them, and being then, as now, a thoroughfare for vessels passing into and out of the Gulf of St. Lawrence. The union of the two colonies cannot, therefore, be admitted as vesting in the province the right to close a passage which has been freely and indisputably used by the citizens of the United States since the year 1783. It is impossible, moreover, to conceive how the use on the part of the United States, common, it is believed, to all other nations, can in any manner conflict with the letter or spirit of the existing treaty stipulations. The undersigned would, therefore, fain hope that her Majesty's government would be disposed to meet, as far as practicable, the wishes of the American government in the accomplishing, in the fullest and most liberal manner, the objects which both governments had in view in entering into the conventional arrangement of 1818. He has accordingly been instructed to bring the whole subject under the consideration of the British government, and to remonstrate on the part of this government against the illegal and

vexatious proceedings of the authorities of Nova Scotia against the citizens of the United States engaged in the fisheries, and to request that measures may be forthwith adopted by the British government to remedy the evil arising out of the misconstruction, on the part of the provincial authorities, of their conventional engagements, and prevent the possibility of the recurrence of similar acts. The undersigned renews to Lord Palmerston, &c.

"A. STEVENSON.

"32, UPPER GROSVENOR STREET,

"*March 27, 1841.*"

This despatch was transmitted to the Secretary for the Colonies on the 2d of April, and (seven days later) a copy of it was sent to Lord Falkland, Lieutenant Governor of Nova Scotia, with a request that his lordship would make immediate inquiry into the allegations contained in it, and furnish the Colonial Office with a detailed report on the subject, for the information of her Majesty's government. On the 28th of the same month, Lord Falkland wrote to Lord John Russell, that "The greatest anxiety is felt by the inhabitants of this province that the convention with the Americans, signed at London on the 20th October, 1818, should be strictly enforced; and it is hoped that the consideration of the report may induce your lordship to exert your influence in such a manner as to lead to the augmentation of the force (a single vessel) now engaged in protecting the fisheries on the Banks of Newfoundland, and the south shore of Labrador, and the employment, in addition, of one or two steamers for that purpose.

"The people of this colony have not been wanting in efforts to repress the incursions of the natives of the United States upon their fishing grounds, but have fitted out with good effect some small armed vessels, adapted to follow trespassers into shoal water, or chase them on the seas;" and that, "finding their own means inadequate to the suppression of this evil, the Nova Scotians earnestly entreat the further intervention and protection of the mother country."

His lordship's letter enclosed a copy of a report of a committee on the fisheries of Nova Scotia, which had been adopted by the House of Assembly, and a "case" stated, at the request of that body, "for the purpose of obtaining the opinion of the law officers of the crown in England." The preamble of the latter document recites the rights stipulated in the treaty of 1783; the fact of the war between England and the United States in 1812; the first article of the convention of 1818; and refers to the act of Parliament of 1819, passed to meet the conditions of the convention, and also to the act of Nova Scotia of 1836; and concludes with submitting to the consideration of the Queen's advocate, and her Majesty's attorney general, the following seven queries:

1. Whether the treaty of 1783 was annulled by the war of 1812, and whether citizens of the United States possess any right of fishery in the waters of the lower provinces other than ceded to them by the convention of 1818; and if so, what right?

2. Have American citizens the right, under that convention, to enter any of the bays of this province to take fish, if, after they have so entered, they prosecute the fishery more than three marine miles from the shores of such bays; or should the prescribed distance of



three marine miles be measured from the headlands, at the entrance of such bays, so as to exclude them?

3. Is the distance of three marine miles to be computed from the indents of the coasts of British America, or from the extreme headlands, and what is to be considered a headland?

4. Have American vessels, fitted out for a fishery, a right to pass through the Gut of Canso, which they cannot do without coming within the prescribed limits, or to anchor there or to fish there; and is casting bait to lure fish in the track of the vessels fishing, within the meaning of the convention?

5. Have American citizens a right to land on the Magdalene islands, and conduct the fishery from the shores thereof, by using nets and seines; or what right of fishery do they possess on the shores of those islands, and what is meant by the term shore?

6. Have American fisherman the right to enter the bays and harbors of this province for the purpose of purchasing wood or obtaining water, having provided neither of these articles at the commencement of their voyages, in their own country; or have they the right only of entering such bays and harbors in cases of distress, or to purchase wood and obtain water, after the usual stock of those articles for the voyage of such fishing craft has been exhausted or destroyed?

7. Under existing treaties, what rights of fishery are ceded to the citizens of the United States of America, and what reserved for the exclusive enjoyment of British subjects?

These queries were sent to the law officers of the crown on the 8th of June, and on the 30th of August they communicated their reply to Lord Palmerston. They state that, in answer to the *first* query—

“We have the honor to report that we are of opinion that the treaty of 1783 was annulled by the war of 1812; and we are also of opinion that the rights of fishery of the citizens of the United States must now be considered as defined and regulated by the convention of 1818; and with respect to the general question, ‘*if so, what right?*’ we can only refer to the terms of the convention as explained and elucidated by the observations which will occur in answering the other specific queries.

“2. Except within certain defined limits, to which the query put to us does not apply, we are of opinion that, by the terms of the treaty, American citizens are excluded from the right of fishing within three miles of the coast of British America; and that the prescribed distance of three miles is to be measured from the headlands or extreme points of land next the sea of the coast, or o. the entrance of the bays, and not from the interior of such bays or inlets of the coast; and consequently that no right exists on the part of American citizens to enter the bays of Nova Scotia, there to take fish, although the fishing, being within the bay, may be at a greater distance than three miles from the shore of the bay, as we are of opinion that the term headland is used in the treaty to express the part of the land we have before mentioned, excluding the interior of the bays and the inlets of the coasts.

“4. By the treaty of 1818 it is agreed that American citizens should have the liberty of fishing in the Gulf of St. Lawrence, within certain defined limits, in common with British subjects; and such treaty does not contain any words negating the right to navigate the passage of the Gut of Canso, and therefore it may be conceded that such right of navigation is not taken away by that convention; but we have now

attentively considered the course of navigation to the gulf by Cape Breton, and likewise the capacity and situation of the passage of Canso, and of the British dominions on either side, and we are of opinion that, independently of treaty, no foreign country has the right to use or navigate the passage of Canso; and attending to the terms of the convention relating to the liberty of fishery to be enjoyed by the Americans, we are also of opinion that that convention did not either expressly or by implication concede any such right of using or navigating the passage in question. We are also of opinion that casting bait to lure fish in the track of any American vessels navigating the passage would constitute a fishing within the negative terms of the convention.

"5. With reference to the claim of a right to land on the Magdalene islands, and to fish from the shores thereof, it must be observed that by the treaty the liberty of drying and curing fish (purposes which could only be accomplished by landing) in any of the unsettled bays, &c., of the southern part of Newfoundland, and of the coast of Labrador, is specifically provided for; but such liberty is distinctly negatived in any settled bay, &c.; and it must therefore be inferred that if the liberty of landing on the shores of the Magdalene islands had been intended to be conceded, such an important concession would have been the subject of express stipulation, and would necessarily have been accompanied with a description of the inland extent of the shore over which such liberty was to be exercised, and whether in settled or unsettled parts; but neither of these important particulars is provided for, even by implication; and that, among other considerations, leads us to the conclusion that American citizens have no right to land or conduct the fishery from the shores of the Magdalene islands. The word 'shore' does not appear to be used in the convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would therefore compromise the land covered with water as far as could be available for the due enjoyment of the liberty granted.

"6. By the convention, the liberty of entering the bays and harbors of Nova Scotia for the purpose of purchasing wood and obtaining water is conceded in general terms, unrestricted by any condition expressed or implied, limiting it to vessels duly provided at the commencement of the voyage; and we are of opinion that no such condition can be attached to the enjoyment of the liberty.

"7. The rights of fishery ceded to the citizens of the United States, and those reserved for the exclusive enjoyment of British subjects, depend altogether upon the convention of 1818, the only existing treaty on this subject between the two countries, and the material points arising thereon have been specifically answered in our replies to the preceding queries.

"We, have, &c.,

"J. DODSON.

"THOS. WILDE.

"Viscount PALMERSTON, *K. B.*, &c., &c."

Fifteen months elapsed before Lord Stanley,\* who, as the Earl of Derby, is the present prime minister of England, sent the answer of the crown lawyers to Lord Falkland. That it was communicated with

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\* The successor of Lord John Russell as Secretary for the Colonies.



reluctance, even in November, 1842, is apparent. The subject to which it relates, said he, "has frequently engaged the attention of myself and my colleagues, with the view of adopting further measures, if necessary, for the protection of British interests in accordance with the law as laid down" by these functionaries. "We have, however, on full consideration, come to the conclusion, as regards the fisheries of Nova Scotia, that the precautions taken by the provincial legislature appear adequate to the purpose; and that *being practically acquiesced in by the Americans, no further measures are required.*" (The closing declaration, which I have placed in italics, will not fail to attract notice.)

Meantime (between August, 1841, and November, 1842,) Lord Falkland had forwarded to the colonial secretary two additional reports made by committees of the House of Assembly, "complaining of the encroachments of American citizens on the fisheries of British North America, and praying the establishment of a general code of regulations for their protection. A change had occurred in the ministry of England, and Mr. Everett had succeeded Mr. Stevenson as our envoy at the court of St. James.

The colonists were not tardy in acting up to the suggestion of Lord Stanley, that our government had "*practically acquiesced*" in the construction of the convention of 1818, presented in Lord Falkland's "CASE," and affirmed by the crown lawyers. Early in 1843, the subject was considered at a meeting of the chamber of commerce of Halifax; and the opinion of the Queen's advocate, and her Majesty's attorney general, was received with great satisfaction by the merchants of that city. Henceforth, in the judgment of some, competition between the colonial fishermen and our countrymen was at an end. The latter, excluded from the great bays by lines drawn from headland to headland, refused passage through the Strait of Canso, and deprived of the right of landing on the *shores* of the Magdalene islands, were, in effect, to be confined to the Newfoundland and Labrador fisheries. Assuming, as the colonial authorities did, that *we* were bound by a private and ex parte opinion, of which our government had no official knowledge, the schooner Washington, of Newburyport, was seized for no reason, as appears, other than "fishing broad" (to use a term of fishermen) in the Bay of Fundy. The fact was communicated to Mr. Upshur, Secretary of State, who, on the 30th June, 1843, addressed Mr. Everett in the following terms:

"SIR: I have the honor to transmit to you, herewith, copies of a letter and accompanying papers, relating to the seizure, on the 10th of May last, on the coast of Nova Scotia, by an officer of the provincial customs, of the American fishing schooner Washington, of Newburyport, Massachusetts, Cheney, master, for an alleged infraction of the stipulations of the convention of October 20, 1818, between the United States and Great Britain.

"Upon a reference to the files of the legation at London, you will find that this complaint is not the first of a similar character which has arisen out of the proceedings of the authorities of Nova Scotia under their construction of the convention, and that representations upon the subject have heretofore been made to the British government on behalf of American citizens, but, so far as this department is advised, without leading to a satisfactory result.

"For a full understanding of the whole question involved, I would particularly point your attention to the instructions of this department to Mr. Stevenson, Nos. 71 and 89, of the respective dates of April 17, 1840, and February 20, 1841, and to the several despatches addressed by that minister to the Secretary of State, numbered 97, 99, 108, 120, and 124, during the years 1840 and 1841.

"I need not remark upon the importance to the negotiating interests of the United States of having a proper construction put upon the first article of the convention of 1818 by the parties to it. That which has hitherto obtained is believed to be the correct one. The obvious necessity of an authoritative intervention to put an end to proceedings on the part of the British colonial authorities, alike conflicting with their conventional obligations, and ruinous to the fortunes and subversive of the rights of an enterprising and deserving class of our fellow-citizens, is too apparent to allow this government to doubt that the government of her Britannic Majesty will take efficient steps for the purpose. The President's confident expectation of an early and satisfactory adjustment of these difficulties is grounded upon his reliance on the sense of justice of the Queen's government, and on the fact that from the year 1818, the date of the convention, until some years after the enactment of the provincial law out of which these troubles have arisen, a *practical* construction has been given to the first article of that instrument which is firmly relied on as settling its meaning in favor of the rights of American citizens as claimed by the United States.

"I have, therefore, to request that you will present this subject again to the consideration of her Majesty's government by addressing a note to the British Secretary of State for Foreign Affairs, reminding him that the letter of Mr. Stevenson to Lord Palmerston remains unanswered, and informing him of the anxious desire of the President that proper means should be taken to prevent the possibility of a recurrence of any like cause of complaint."

Mr. Everett, on the 10th of August of the same year, thus ably and clearly stated his views:

"The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honor to transmit to the Earl of Aberdeen, her Majesty's principal Secretary of State for Foreign Affairs, the accompanying papers relating to the seizure on the 10th of May last, on the coast of Nova Scotia, by an officer of the provincial customs, of the American fishing schooner Washington, of Newburyport, in the State of Massachusetts, for an alleged infraction of the stipulations of the convention of the 20th of October, 1818, between the United States and Great Britain.

"It appears from the deposition of William Bragg, a seaman on board the Washington, that at the time of her seizure she was not within ten miles of the coast of Nova Scotia. By the first article of the convention above alluded to, the United States renounce any liberty heretofore enjoyed or claimed by their inhabitants to take, dry, or cure fish on or within three marine miles of any of the coasts of her Majesty's dominions in America, for which express provision is not made in the said article. This renunciation is the only limitation existing on the right of fishing upon the coasts of her Majesty's dominions in America, secured to the people of the United States by the third article of the treaty of 1783.



"The right, therefore, of fishing on any part of the coast of Nova Scotia, at a greater distance than three miles, is so plain, that it would be difficult to conceive on what ground it could be drawn in question, had not attempts been already made by the provincial authorities of her Majesty's colonies to interfere with its exercise. These attempts have formed the subject of repeated complaints on the part of the government of the United States, as will appear from several notes addressed by the predecessor of the undersigned to Lord Palmerston.

"From the construction attempted to be placed, on former occasions, upon the first article of the treaty of 1818, by the colonial authorities, the undersigned supposes that the 'Washington' was seized because she was found fishing in the Bay of Fundy, and on the ground that the lines within which American vessels are forbidden to fish are to run from headland to headland, and not to follow the shore. It is plain, however, that neither the words nor the spirit of the convention admit of any such construction; nor, it is believed, was it set up by the provincial authorities for several years after the negotiation of that instrument. A glance at the map will show Lord Aberdeen that there is, perhaps, no part of the great extent of the seacoasts of her Majesty's possessions in America in which the right of an American vessel to fish can be subject to less doubt than that in which the 'Washington' was seized.

"For a full statement of the nature of the complaints which have, from time to time, been made by the government of the United States against the proceedings of the colonial authorities of Great Britain, the undersigned invites the attention of Lord Aberdeen to a note of Mr. Stevenson, addressed to Lord Palmerston on the 27th of March, 1841. The receipt of this note was acknowledged by Lord Palmerston on the 2d of April, and Mr. Stevenson was informed that the subject was referred by his lordship to the Secretary of State for the colonial department.

"On the 28th of the same month Mr. Stevenson was further informed by Lord Palmerston, that he had received a letter from the colonial department, acquainting his lordship that Mr. Stevenson's communication would be forwarded to Lord Falkland, with instructions to inquire into the allegations contained therein, and to furnish a detailed report upon the subject. The undersigned does not find on the files of this legation any further communication from Lord Palmerston in reply to Mr. Stevenson's letter of the 27th March, 1841, and he believes that letter still remains unanswered.

"In reference to the case of the 'Washington,' and those of a similar nature which have formerly occurred, the undersigned cannot but remark upon the impropriety of the conduct of the colonial authorities in undertaking, without directions from her Majesty's government, to set up a new construction of a treaty between the United States and England, and in proceeding to act upon it by the forcible seizure of American vessels.

"Such a summary procedure could only be justified by a case of extreme necessity, and where some grave and impending mischief required to be averted without delay. To proceed to the capture of vessels of a friendly power for taking a few fish within limits alleged to be forbidden, although allowed by the express terms of the treaty, must be regarded as a very objectionable stretch of provincial authority. The case is obviously one for the consideration of the two govern-

ments, and in which no disturbance of a right exercised without question for fifty years from the treaty of 1783 ought to be attempted by any subordinate authority. Even her Majesty's government, the undersigned is convinced, would not proceed in such a case to violent measures of suppression without some understanding with the government of the United States, or, in the failure of an attempt to come to an understanding, without due notice given of the course intended to be pursued.

"The undersigned need not urge upon Lord Aberdeen the desirableness of an authoritative intervention on the part of her Majesty's government to put an end to the proceedings complained of. The President of the United States entertains a confident expectation of an early and equitable adjustment of the difficulties which have been now for so long a time under the consideration of her Majesty's government. This expectation is the result of the President's reliance upon the sense of justice of her Majesty's government, and of the fact that from the year 1818, the date of the convention, until some years after the attempts of the provincial authorities to restrict the rights of American vessels by colonial legislation, a *practical* construction was given to the first article of the convention, in accordance with the obvious purport of its terms, and settling its meaning as understood by the United States.

"The undersigned avails himself of this opportunity to tender to Lord Aberdeen the assurance of his distinguished consideration."

Lord Aberdeen did not reply to Mr. Everett's letter until the 15th of April, 1844. In his answer of that date, which follows, it will be seen that his lordship declined to enter into a defence of the course adopted by Nova Scotia; and that he confined himself to the seizure of the Washington, and to an argument upon the term "bay" as used in the convention. It will be seen, also, that he justified the detention of the Washington on the ground, solely, that she "was found fishing within the Bay of Fundy." He says:

"The note which Mr. Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, addressed to the undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, on the 10th of August last, respecting the seizure of the American fishing vessel Washington, by the officers of Nova Scotia, having been duly referred to the Colonial Office, and by that office to the governor of Nova Scotia, the undersigned has now the honor to communicate to Mr. Everett the result of those references.

"The complaint which Mr. Everett submits to her Majesty's government is, that, contrary to the express stipulations of the convention concluded on the 20th of October, 1818, between Great Britain and the United States, an American fishing vessel was seized by the British authorities for fishing in the Bay of Fundy, where Mr. Everett affirms that, by the treaty, American vessels have a right to fish, provided they are at a greater distance than three marine miles from the coast.

"Mr. Everett, in submitting this case, does not cite the words of the treaty, but states, in general terms, that by the first article of said treaty the United States renounce any liberty heretofore enjoyed or claimed by their inhabitants, to take, dry, or cure fish, on or within three miles of any of the coasts of any Majesty's dominions in America. Upon reference, however, to the words of the treaty, it will be seen



that American vessels have no right to fish, and indeed are expressly debarred from fishing, in any bay on the coast of Nova Scotia.

"The words of the treaty of October, 1818, article 1, run thus: 'And the United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to *take*, dry, or cure fish, on or *within three marine* miles of any of the coasts, *bays*, creeks, or harbors of his Britannic Majesty's dominions in America, not included within the above-mentioned limits, [that is, Newfoundland, Labrador, and other parts separate from Nova Scotia:] provided, however, that the American fishermen shall be *admitted to enter* such bays or harbors for the purpose of shelter,' &c.

"It is thus clearly provided that American fishermen shall not take fish within three marine miles of any bay of Nova Scotia, &c. If the treaty was intended to stipulate simply that American fishermen should not take fish within three miles of the coast of Nova Scotia, &c., there was no occasion for using the word '*bay*' at all. But the proviso at the end of the article shows that the word '*bay*' was used designedly; for it is expressly stated in that proviso, that under certain circumstances the American fishermen may enter *bays*, by which it is evidently meant that they may, under those circumstances, pass the sea-line which forms the entrance of the bay. The undersigned apprehends that this construction will be admitted by Mr. Everett.

"That the Washington was found fishing within the Bay of Fundy, is, the undersigned believes, an admitted fact, and she was seized accordingly."

It is possible that the contents of Lord Aberdeen's letter were immediately communicated to Lord Falkland, since the latter, a few weeks after its date, issued a proclamation charging all officers of the customs, the sheriffs, and other officials of Nova Scotia, to be vigilant in enforcing the provision of several recited acts of the imperial and provincial legislatures, and the stipulations of the convention with the United States, relative to illicit fishing within certain distance of the coasts, *bays*, and harbors of British America. Mr. Everett again addressed the British minister on the 25th May, 1844, in a state paper which, for spirit, dignity, and force of argument, is a model. It is here inserted entire:

"The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, had the honor duly to receive the note of the 15th of April, addressed to him by the Earl of Aberdeen, her Majesty's Principal Secretary of State for Foreign Affairs, in reply to the note of the undersigned of the 10th of August last, relative to the seizure of the American vessel the Washington, for having been found fishing within the limits of the Bay of Fundy.

"The note of the undersigned of the 10th of August last, although its immediate occasion was the seizure of the Washington, contained a reference to the correspondence between Mr. Stevenson and Viscount Palmerston on the subject of former complaints of the American government of the manner in which the fishing vessels of the United States had, in several ways, been interfered with by the provincial authorities, in contravention, as is believed, of the treaty of October, 1818, between the two countries. Lord Aberdeen's attention was particularly invited to the fact that no answer as yet had been returned to Mr. Stevenson's note to Lord Palmerston, of 27th March, 1841, the receipt of which, and its reference to the Colonial Depart-

ment, were announced by a note of Lord Palmerston of the 2d of April. The undersigned further observed that, on the 20th of the same month, Lord Palmerston acquainted Mr. Stevenson that his lordship had been advised from the Colonial Office that 'copies of the papers received from Mr. Stevenson would be furnished to Lord Falkland, with instructions to inquire into the allegations contained therein, and to furnish a detailed report on the subject;' but that there was not found on the files of this legation any further communication from Lord Palmerston on the subject.

"The note of Lord Aberdeen of the 15th of April last is confined exclusively to the case of the *Washington*; and it accordingly becomes the duty of the undersigned again to invite his lordship's attention to the correspondence above referred to between Mr. Stevenson and Lord Palmerston, and to request that inquiry may be made, without unnecessary delay, into all the causes of complaint which have been made by the American government against the improper interference of the British colonial authorities with the fishing vessels of the United States.

"In reference to the case of the *Washington*, Lord Aberdeen, in his note of the 15th of April, justifies her seizure by an armed provincial vessel, on the assumed fact that, as she was found fishing in the Bay of Fundy, she was within the limits from which the fishing vessels of the United States are excluded by the provisions of the convention between the two countries of October, 1818.

"The undersigned had remarked, in his note of the 10th of August last, on the impropriety of the conduct of the colonial authorities in proceeding in reference to a question of construction of a treaty pending between the two countries, to decide the question in their own favor, and in virtue of that decision to order the capture of the vessels of a friendly State. A summary exercise of power of this kind, the undersigned is sure, would never be resorted to by her Majesty's government, except in an extreme case, while a negotiation was in train on the point at issue. Such a procedure, on the part of a local colonial authority, is, of course, highly objectionable, and the undersigned cannot but again invite the attention of Lord Aberdeen to this view of the subject.

"With respect to the main question of the right of American vessels to fish within the acknowledged limits of the Bay of Fundy, it is necessary, for a clear understanding of the case, to go back to the treaty of 1783.

"By this treaty it was provided that the citizens of the United States should be allowed 'to take fish of every kind on such part of the coast of Newfoundland as British fishermen shall use, (but not to dry or cure the same on that island,) and also on the coasts, bays, and creeks of all other of his Britannic Majesty's dominions in America, and that the American fishermen shall have liberty to dry and cure fish in any of the unsettled bays, harbors, and creeks of Nova Scotia, Magdalene islands, and Labrador, so long as the same shall remain unsettled; but so soon as the same or either of them shall be settled, it shall not be lawful for the said fishermen to dry or cure fish at such settlement without a previous agreement for that purpose with the inhabitants, proprietors, or possessors of that ground.'

"These privileges and conditions were in reference to a country of which a considerable portion was then unsettled, likely to be



attended with differences of opinion as to what should, in the progress of time, be accounted a settlement from which American fishermen might be excluded. These differences in fact arose, and by the year 1818 the state of things was so far changed that her Majesty's government thought it necessary, in negotiating the convention of that year, entirely to except the province of Nova Scotia from the number of the places which might be frequented by Americans as being in part unsettled, and to provide that the fishermen of the United States should not pursue their occupation within three miles of the shores, bays, creeks, and harbors of that and other parts of her Majesty's possessions similarly situated. The privilege reserved to American fishermen by the treaty of 1783, of taking fish in all the waters, and drying them on all the unsettled portions of the coast of these possessions, was accordingly, by the convention of 1818, restricted as follows:

“The United States hereby renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof, to take, dry, or cure fish on or within three miles of any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America, not included within the above-mentioned limits: provided, however, that the American fishermen shall be admitted to enter such bays or harbors for the purpose of sheltering and repairing damages therein, of purchasing wood, and of obtaining water, and for no other purpose whatever.’

“The existing doubt as to the construction of the provision arises from the fact that a broad arm of the sea runs up to the northeast, between the provinces of New Brunswick and Nova Scotia. This arm of the sea being commonly called the Bay of Fundy, though not in reality possessing all the characters usually implied by the term ‘bay,’ has of late years been claimed by the provincial authorities of Nova Scotia to be included among ‘the coasts, bays, creeks, and harbors’ forbidden to American fishermen.

“An examination of the map is sufficient to show the doubtful nature of this construction. It was notoriously the object of the article of the treaty in question to put an end to the difficulties which had grown out of the operations of the fishermen from the United States along the coasts and upon the shores of the settled portions of the country, and for that purpose to remove their vessels to a distance not exceeding three miles from the same. In estimating this distance, the undersigned admits it to be the intent of the treaty, as it is itself reasonable, to have regard to the general line of the coast; and to consider its bays, creeks, and harbors—that is, the indentations usually so accounted—as included within that line. But the undersigned cannot admit it to be reasonable, instead of thus following the general directions of the coast, to draw a line from the southwesternmost point of Nova Scotia to the termination of the northeastern boundary between the United States and New Brunswick, and to consider the arms of the sea which will thus be cut off, and which cannot, on that line, be less than sixty miles wide, as one of the bays on the coast from which American vessels are excluded. By this interpretation the fishermen of the United States would be shut out from the waters distant, not three, but thirty miles from any part of the colonial coast. The undersigned cannot perceive that any assignable object of the restriction imposed by the convention of 1818 on the fishing privilege accorded to the citizens of

the United States by the treaty of 1783, requires such a latitude of construction.

"It is obvious that (by the terms of the treaty) the farthest distance to which fishing vessels of the United States are obliged to hold themselves from the colonial coasts and bays, is three miles. But, owing to the peculiar configuration of these coasts, there is a succession of bays indenting the shores both of New Brunswick and Nova Scotia, within the Bay of Fundy. The vessels of the United States have a general right to approach all the bays in her Majesty's colonial dominions, within any distance not less than three miles—a privilege from the enjoyment of which they will be wholly excluded—in this part of the coast, if the broad arm of the sea which flows up between New Brunswick and Nova Scotia is itself to be considered one of the forbidden bays.

"Lastly—and this consideration seems to put the matter beyond doubt—the construction set up by her Majesty's colonial authorities, would altogether nullify another, and that a most important stipulation of the treaty, about which there is no controversy, viz: the privilege reserved to American fishing vessels of taking shelter and repairing damages in the bays within which they are forbidden to fish. There is, of course, no shelter nor means of repairing damages for a vessel entering the Bay of Fundy, in itself considered. It is necessary, before relief or succor of any kind can be had, to traverse that broad arm of the sea and reach the bays and harbors, properly so called, which indent the coast, and which are no doubt the bays and harbors referred to in the convention of 1818. The privilege of entering the latter in extremity of weather, reserved by the treaty, is of the utmost importance. It enables the fisherman, whose equipage is always very slender, (that of the *Washington* was four men all told,) to pursue his laborious occupation with comparative safety, in the assurance that in one of the sudden and dangerous changes of weather so frequent and so terrible on this iron-bound coast, he can take shelter in a *neighboring* and friendly port. To forbid him to approach within thirty miles of that port, except for shelter in extremity of weather, is to forbid him to resort there for that purpose. It is keeping him at such a distance at sea as wholly to destroy the value of the privilege expressly reserved.

"In fact it would follow, if the construction contended for by the British colonial authorities were sustained, that two entirely different limitations would exist in reference to the right of shelter reserved to American vessels on the shores of her Majesty's colonial possessions. They would be allowed to fish within three miles of the place of shelter along the greater part of the coast; while in reference to the entire extent of shore within the Bay of Fundy, they would be wholly prohibited from fishing along the coast, and would be kept at a distance of twenty or thirty miles from any place of refuge in case of extremity. There are certainly no obvious principles which render such a construction probable.

"The undersigned flatters himself that these considerations will go far to satisfy Lord Aberdeen of the correctness of the American understanding of the words 'Bay of Fundy,' arguing on the terms of the treaties of 1783 and 1818. When it is admitted that, as the undersigned is advised, there has been no attempt till late years to give them any other construction than that for which the American government now contends, the point would seem to be placed beyond doubt.



"Meantime Lord Aberdeen will allow that this is a question, however doubtful, to be settled exclusively by her Majesty's government and that of the United States. No disposition has been evinced by the latter to anticipate the decision of the question; and the undersigned must again represent it to the Earl of Aberdeen as a matter of just complaint and surprise on the part of his government, that the opposite course has been pursued by her Majesty's colonial authorities, who have proceeded (the undersigned is confident without instructions from London) to capture and detain an American vessel on a construction of the treaty which is a matter of discussion between the two governments, and while the undersigned is actually awaiting a communication on the subject promised to his predecessor.

"This course of conduct, it may be added, objectionable under any circumstances, finds no excuse in any supposed urgency of the case. The *Washington* was not within three times the limit admitted to be prescribed in reference to the approach of American vessels to all other parts of the coast, and in taking a few fish, out of the abundance which exists in those seas, she certainly was inflicting no injury on the interests of the colonial population which required this summary and violent measure of redress.

"The undersigned trusts that the Earl of Aberdeen, on giving a renewed consideration to the case, will order the restoration of the *Washington*, if still detained, and direct the colonial authorities to abstain from the further capture of the fishing vessels of the United States under similar circumstances, till it has been decided between the two governments whether the Bay of Fundy is included among 'the coasts, bays, creeks, and harbors,' which American vessels are not permitted to approach within three miles.

"The undersigned requests Lord Aberdeen to accept the assurances of his distinguished consideration."

On the 6th September, 1844, Mr. Calhoun (who had succeeded Mr. Upshur as Secretary of State) called the attention of Mr. Everett to the seizure of the American fishing schooner *Argus*, by the British cutter *Sylph*, off the coast of Cape Breton. From the representation which accompanied the Secretary's despatch, it appears that the *Argus*, when captured, was at a distance of "fifteen miles from any land." This was the second case of seizure under the *new* construction of the convention of 1818. Mr. Everett, in presenting the matter to Lord Aberdeen, on the 9th of October of that year, stated that "The grounds assigned for the capture of this vessel are not stated with great distinctness. They appear to be connected partly by the construction set up by her Majesty's provincial authorities in America, that the line within which vessels of the United States are forbidden to fish is to be drawn from headland to headland, and not to follow the indentations of the coast, and partly with the regulations established by those authorities, in consequence of the annexation of Cape Breton to Nova Scotia." That, "with respect to the former point, the undersigned deems it unnecessary, on this occasion, to add anything to the observations contained in his note to Lord Aberdeen, of the 25th of May, on the subject of limitations of the right secured to American fishing vessels by the treaty of 1783 and the convention of 1818, in reply to the note of his lordship of the 15th of April on the same subject. As far as the capture of the *Argus* was made under the authority of the act annexing Cape Breton to Nova Scotia, the undersigned would observe

that he is under the impression that the question of the legality of that measure is still pending before the judicial committee of her Majesty's privy council. It would be very doubtful whether rights secured to American vessels under public compacts could, under any circumstances, be impaired by acts of subsequent domestic legislation; but to proceed to capture American vessels, in virtue of such acts, while their legality is drawn in question by the home government, seems to be a measure as unjust as it is harsh."

And he remarked, further, that "it is stated by the captain of the 'Argus' that the commander of the Nova Scotia schooner, by which he was captured, said that he was within three miles of the line beyond which, 'on their construction of the treaty, we were a lawful prize, and that he seized us to settle the question.'

"The undersigned again feels it his duty, on behalf of his government, formally to protest against an act of this description. American vessels of trifling size, and pursuing a branch of industry of the most harmless description, which, however beneficial to themselves, occasions no detriment to others, instead of being turned off the debatable fishing ground—a remedy fully adequate to the alleged evil—are proceeded against as if engaged in the most undoubted infractions of municipal law or the law of nations, captured and sent into port, their crews deprived of their clothing and personal effects, and the vessels subjected to a mode of procedure in the courts which amounts in many cases to confiscation; and this is done to settle the construction of a treaty.

"A course so violent and unnecessarily harsh would be regarded by any government as a just cause of complaint against any other with whom it might differ in the construction of a national compact. But when it is considered that these are the acts of a provincial government, with whom that of the United States has and can have no intercourse, and that they continue and are repeated while the United States and Great Britain, the only parties to the treaty, the purport of whose provisions is called in question, are amicably discussing the matter, with every wish, on both sides, to bring it to a reasonable settlement, Lord Aberdeen will perceive that it becomes a subject of complaint of the most serious kind.

"As such, the undersigned is instructed again to bring it to Lord Aberdeen's notice, and to express the confident hope that such measures of redress as the urgency of the case requires will, at the instance of his lordship, be promptly resorted to."

The events of 1845 were highly interesting and important. The colonists had, apparently, accomplished their long-cherished plans. The opinion of the crown lawyers in 1841; the declaration of Lord Stanley in 1842, that our government "*practically acquiesced*" in the *new* construction of the convention; and the capture of the Washington in 1843, for an infringement of that construction, and for no other offence whatever, were all calculated to impress them with the belief that the contest was at an end. Such, I confess, was the inclination of my own mind. My home was on the frontier; I was a dealer in the products of the sea, and was in the daily transaction of business with fishermen of New Brunswick and Nova Scotia, and was well advised of the measures which were adopted by the colonists, from time to time, to induce the ministry at home to sustain their pretensions. The



zeal which was manifested by those who managed the British side of the case, and the seeming apathy of the American press and the American people; the rumors from the Government House at Halifax, and the want of all information from the White House at Washington, gave rise to much alarm. Official silence on our part was at last broken; and such of our citizens as were engaged in the fisheries, or were otherwise involved in the issue of the controversy, were astounded, in June, at the following paragraph which appeared in the "Union," a newspaper supposed to enjoy the confidence of our government, and said, in the popular sentiment, to be its "organ." "We are gratified," said that paper, "to be now enabled to state, that a despatch has been recently received at the Department of State from Mr. Everett, our minister at London, with which he transmits a note from Lord Aberdeen, containing the satisfactory intelligence that, after a reconsideration of the subject, although the Queen's government adhere to the construction of the convention which they have always maintained, they have still come to the determination of relaxing from it, so far as to allow American fishermen to pursue their avocations within any part of the Bay of Fundy, provided they do not approach—except in the cases specified in the treaty of 1818—within three miles of the *entrance* of any bay on the coast of Nova Scotia or New Brunswick.

"This is an important concession, not merely as removing an occasion of frequent and unpleasant disagreement between the two governments, but as reopening to our citizens those valuable fishing grounds within the Bay of Fundy which they enjoyed before the war of 1812, but from which, as the British government has since maintained, they were excluded by the convention of 1818."

The assertion, from *such* a source, that the British government had "*always maintained*" the construction of the convention contended for in the "case" submitted to the crown lawyers by Lord Falkland, in 1841; the annunciation that our vessels were no longer to fish "*within three miles of the ENTRANCE of any bay on the coast of Nova Scotia or New Brunswick,*" the Bay of Fundy alone excepted; the further declaration that the fishing grounds of that bay "enjoyed before the war of 1812," and lost to us by that event, were now "reopened" to us by "an important concession"—excited the liveliest sensibility and were regarded in the fishing towns of Maine and Massachusetts with dismay. The colonists had pushed their claims so secretly and so adroitly, that the crowning acts of their policy were hardly known to our countrymen who resorted to their seas; and the fact that the Bay of Fundy was in *dispute*, was first ascertained by many of them on the seizure of the "Washington" for fishing there. It was expected that some more definite annunciation would be made, or that the correspondence between Mr. Everett and the British government, which preceded and led to the "concession," would follow the article just quoted from the "Union;" but the precise terms of the arrangement of 1845 were never stated, either in that paper or elsewhere, and the citizens whose property was exposed to capture by British cruisers and colonial cutters were left to pursue their business in apprehension and doubt. Under these circumstances, the writer of this report assumed the task of attempting to impress the public mind with the probable state of affairs. He wrote for the periodical and for the newspaper press; he addressed letters to persons interested

in enterprises to the British colonial seas, and to persons in official employments; he continued his labors, in various other ways, for quite a year: he was unsupported, and abandoned the design finally in despair.

The American people remained in ignorance of the tenor of the correspondence referred to above until August, 1852, when it was embraced in the documents submitted by the President to the Senate, in answer to a resolution of that body. Lord Aberdeen's letter of March 10, 1845, consenting to admit our fishermen into the Bay of Fundy, "*as the concession of a privilege*," and in relaxation of the new construction of the convention, and Mr. Everett's reply, of the 25th of the same month, accepting the same as the continuation of "a right" always enjoyed, and never impaired, are properly inserted in this connexion. The letter of our minister, it is to be observed, was among his last official acts, as he was recalled almost immediately after communicating to our government the conditions which, in opposition to the remonstrances of the colonists, and the alleged "practical acquiescence" of our own cabinet in the opinion of the crown lawyers, he had been able to secure; it closed the correspondence. In ability, it is in no respect inferior to his letter of May 25th, 1844, already copied, and is among the most valuable state papers in our archives, inasmuch as it is the only one which we can cite to show our dissent to the British claim to the Bay of Fundy, "*as a bay within the meaning of the treaty of 1818.*"

His lordship said:

"The undersigned, her Majesty's Principal Secretary of State for Foreign Affairs, duly referred to the colonial department the note which Mr. Everett, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, did him the honor to address to him on the 25th of May last, respecting the case of the 'Washington,' fishing vessel, and on the general question of the right of United States fishermen to pursue their calling in the Bay of Fundy; and having shortly since received the answer of that department, the undersigned is now enabled to make a reply to Mr. Everett's communication, which he trusts will be found satisfactory.

"In acquitting himself of this duty, the undersigned will not think it necessary to enter into a lengthened argument in reply to the observations which have at different times been submitted to her Majesty's government by Mr. Stevenson and Mr. Everett, on the subject of the right of fishing in the Bay of Fundy, as claimed in behalf of the United States citizens. The undersigned will confine himself to stating that after the most deliberate reconsideration of the subject, and with every desire to do full justice to the United States, and to view the claims put forward on behalf of United States citizens in the most favorable light, her Majesty's government are nevertheless still constrained to deny the right of United States citizens, under the treaty of 1818, to fish in that part of the Bay of Fundy which, from its geographical position, may properly be considered as included within the British possessions.

"Her Majesty's government must still maintain—and in this view they are fortified by high legal authority—that the Bay of Fundy is rightfully claimed by Great Britain, as a bay within the meaning of the treaty of 1818. And they equally maintain the position which was laid down in the note of the undersigned, dated the 15th of April last,



that, with regard to the other bays on the British American coasts, no United States fisherman has, under that convention, the right to fish within three miles of the *entrance* of such bays as designated by a line drawn from headland to headland at that entrance.

"But while her Majesty's government still feel themselves bound to maintain these positions as a matter of right, they are nevertheless not insensible to the advantages which would accrue to both countries from a relaxation of the exercise of that right; to the United States as conferring a material benefit on their fishing trade; and to Great Britain and the United States, conjointly and equally, by the removal of a fertile source of disagreement between them.

"Her Majesty's government are also anxious, at the same time that they uphold the just claims of the British crown, to evince by every reasonable concession their desire to act liberally and amicably towards the United States.

"The undersigned has accordingly much pleasure in announcing to Mr. Everett the determination to which her Majesty's government have come, to relax in favor of the United States fishermen that right which Great Britain has hitherto exercised, of excluding those fishermen from the British portion of the Bay of Fundy, and they are prepared to direct their colonial authorities to allow henceforward the United States fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the treaty of 1818, within three miles of the *entrance* of any bay on the coast of Nova Scotia or New Brunswick.

"In thus communicating to Mr. Everett the liberal intentions of her Majesty's government, the undersigned desires to call Mr. Everett's attention to the fact that the produce of the labor of the British colonial fishermen is at the present moment excluded by prohibitory duties on the part of the United States from the markets of that country; and the undersigned would submit to Mr. Everett that the moment at which the British government are making a liberal concession to United States trade, might well be deemed favorable for a counter concession on the part of the United States to British trade, by the reduction of the duties which operate so prejudicially to the interest of the British colonial fishermen.

"The undersigned has the honor to renew to Mr. Everett the assurances of his high consideration."

Mr. Everett rejoined:

"The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, has the honor to acknowledge the receipt of a note of the 10th instant from the Earl of Aberdeen, her Majesty's Principal Secretary of State for Foreign Affairs, in reply to the communication of the undersigned of the 15th of May last, on the case of the 'Washington,' and the construction given by the government of the United States to the convention of 1818, relative to the right of fishing on the coasts of Nova Scotia and New Brunswick.

"Lord Aberdeen acquaints the undersigned, that, after the most deliberate reconsideration of the subject, and with every desire to do full justice to the United States and to view the claims put forward on behalf of their citizens in the most favorable light, her Majesty's government are nevertheless still constrained to deny the right of citizens of the United States, under the treaty of 1818, to fish in that part of the

Bay of Fundy which from its geographical position may properly be considered as included within the British possessions; and also to maintain that, with regard to the other bays on the British American coasts, no United States fisherman has, under that convention, the right to fish within three miles of the *entrance* of such bay, as designated by a line drawn from headland to headland at that entrance.

"Lord Aberdeen, however, informs the undersigned that, although continuing to maintain these positions as a matter of right, her Majesty's government are not insensible to the advantages which might accrue to both countries from a relaxation in its exercise; that they are anxious, while upholding the just claims of the British crown, to evince by every reasonable concession their desire to act liberally and amicably towards the United States; and that her Majesty's government have accordingly come to the determination 'to relax in favor of the United States fishermen the right which Great Britain has hitherto exercised of excluding those fishermen from the British portion of the Bay of Fundy, and are prepared to direct their colonial authorities to allow, henceforward, the United States fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick.'

"The undersigned receives with great satisfaction this communication from Lord Aberdeen, which promises the permanent removal of a fruitful cause of disagreement between the two countries, in reference to a valuable portion of the fisheries in question. The government of the United States, the undersigned is persuaded, will duly appreciate the friendly motives which have led to the determination on the part of her Majesty's government announced in Lord Aberdeen's note, and which he doubts not will have the natural effect of acts of liberality between powerful states, of producing benefits to both parties, beyond any immediate interest which may be favorably affected.

"While he desires, however, without reserve, to express his sense of the amicable disposition evinced by her Majesty's government on this occasion in relaxing in favor of the United States the exercise of what after deliberate consideration, fortified by high legal authority, is deemed an unquestioned right of her Majesty's government, the undersigned would be unfaithful to his duty did he omit to remark to Lord Aberdeen that no arguments have at any time been adduced to shake the confidence of the government of the United States in their own construction of the treaty. While they have ever been prepared to admit, that in the letter of one expression of that instrument there is some reason for claiming a right to exclude United States fishermen from the Bay of Fundy, (it being difficult to deny to that arm of the sea the name of 'bay,' which long geographical usage has assigned to it,) they have ever strenuously maintained that it is only on their own construction of the entire article that its known design in reference to the regulation of the fisheries admits of being carried into effect.

"The undersigned does not make this observation for the sake of detracting from the liberality evinced by her Majesty's government in relaxing from what they regard as their right; but it would be placing his own government in a false position to accept as mere favor that for which they have so long and strenuously contended as due to them under the convention.



"It becomes the more necessary to make this observation, in consequence of some doubt as to the extent of the proposed relaxation. Lord Aberdeen, after stating that her Majesty's government felt themselves constrained to adhere to the right of excluding the United States fishermen from the Bay of Fundy, and also with regard to other bays on the British American coasts, to maintain the position that no United States fisherman has, under that convention, the right to fish within three miles of *the entrance* of such bays, as designated by a line drawn from headland to headland at that entrance, adds, that 'while her Majesty's government still feel themselves bound to maintain these positions as a matter of right, they are not insensible to the advantages which would accrue to both countries from the relaxation of that right.'

"This form of expression might seem to indicate that the relaxation proposed had reference to both positions; but when Lord Aberdeen proceeds to state more particularly its nature and extent, he confines it to a permission to be granted to 'the United States fishermen to pursue their avocations in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the treaty of 1818, within three miles of *the entrance* of any bay on the coast of Nova Scotia and New Brunswick,' which entrance is defined, in another part of Lord Aberdeen's note, as being designated by a line drawn from headland to headland.

"In the case of the 'Washington,' which formed the subject of the note of the undersigned of the 25th May, 1844, to which the present communication of Lord Aberdeen is a reply, the capture complained of was in the waters of the Bay of Fundy: the principal portion of the argument of the undersigned was addressed to that part of the subject; and he is certainly under the impression that it is the point of greatest interest in the discussions which have been hitherto carried on between the two governments, in reference to the United States' right of fishery on the Anglo-American coasts.

"In the case, however, of the 'Argus,' which was treated in the note of the undersigned of the 9th of October, the capture was in the waters which wash the northeastern coast of Cape Breton, a portion of the Atlantic ocean intercepted indeed between a straight line drawn from Cape North to the northern head of Cow bay, but possessing none of the characters of a bay, (far less so than the Bay of Fundy,) and not called a 'bay' on any map which the undersigned has seen. The aforesaid line is a degree of latitude in length; and as far as reliance can be placed on the only maps (English ones) in the possession of the undersigned on which this coast is distinctly laid down, it would exclude vessels from fishing grounds which might be thirty miles from the shore.

"Lord Aberdeen, in his note of the 10th instant, on the case of the 'Argus,' observes that, 'as the point of the construction of the convention of 1818, in reference to the right of fishing in the Anglo-American dependencies by citizens of the United States, is treated in another note of the undersigned of this date, relative to the case of the 'Washington,' the undersigned abstains from again touching on that subject.'

"This expression taken by itself, would seem to authorize the expectation that the waters where these two vessels respectively were captured would be held subject to the same principles, whether of

restriction or relaxation, as indeed all the considerations which occur to the undersigned as having probably led her Majesty's government to the relaxation in reference to the Bay of Fundy exist in full and even superior force in reference to the waters on the northeastern coast of Cape Breton, where the 'Argus' was seized. But if her Majesty's provincial authorities are permitted to regard as a 'bay,' any portion of the sea which can be cut off by a direct line connecting two points of the coast, however destitute in other respects of the character usually implied by that name, not only will the waters on the northeastern coast of Cape Breton, but on many other parts of the shores of the Anglo-American dependencies, where such exclusion has not yet been thought of, be prohibited to American fishermen. In fact, the waters which wash the entire southeastern coast of Nova Scotia, from Cape Sable to Cape Canso, a distance on a straight line of rather less than three hundred miles, would in this way constitute a bay, from which United States fishermen would be excluded.

"The undersigned, however, forbears to dwell on this subject, being far from certain, on a comparison of all that is said in the two notes of Lord Aberdeen of the 10th instant, as to the relaxation proposed by her Majesty's government, that it is not intended to embrace the waters of the northeastern coasts of Cape Breton, as well as the Bay of Fundy.

"Lord Aberdeen, towards the close of the note in which the purpose of her Majesty's government is communicated, invites the attention of the undersigned to the fact that British colonial fish is, at the present time, excluded by prohibitory duties from the markets of the United States, and suggests that the moment at which the British government are making a liberal concession to United States trade, might be deemed favorable for a counter concession on the part of the United States to British trade, by the reduction of duties which operate so prejudicially to the interests of British colonial fishermen.

"The undersigned is of course without instructions which enable him to make any definite reply to this suggestion. It is no doubt true that the British colonial fish, as far as duties are concerned, enters the United States market, if at all, to some disadvantage. The government of the United States, he is persuaded, would gladly make any reduction in these duties which would not seriously injure the native fishermen; but Lord Aberdeen is aware that the encouragement of this class of the seafaring community has ever been considered, as well in the United States as Great Britain, as resting on peculiar grounds of expediency. It is the great school not only of the commercial but of the public marine, and the highest considerations of national policy require it to be fostered.

"The British colonial fishermen possess considerable advantages over those of the United States. The remoter fisheries of Newfoundland and Labrador are considerably more accessible to the colonial than to the United States fishermen. The fishing grounds on the coasts of New Brunswick and Nova Scotia, abounding in cod, mackerel and herring, lie at the doors of the former; he is therefore able to pursue his avocation in a smaller class of vessels, and requires a smaller outfit; he is able to use the net and the seine to great advantage in the small bays and inlets along the coast, from which the fishermen of the United States, under any construction of the treaty, are excluded. All, or nearly all the materials of ship-building, timber,



iron, cordage and canvas, are cheaper in the colonies than in the United States, as are salt, hooks and lines. There is also great advantage enjoyed in the former in reference to the supply of bait and curing the fish. These, and other causes, have enabled the colonial fishermen to drive those of the United States out of many foreign markets, and might do so at home but for the protection afforded by the duties.

"It may be added that the highest duty on the kinds of fish that would be sent to the American market is less than a half-penny per pound, which cannot do more than counterbalance the numerous advantages possessed by the colonial fishermen.

"The undersigned supposes, though he has no particular information to that effect, that equal or higher duties exist in the colonies on the importation of fish from the United States.

"The undersigned requests the Earl of Aberdeen to accept the assurance of his high consideration."

At the date of these letters, Mr. Everett seems to have believed that "the negotiation was in the most favorable state for a full and satisfactory adjustment" of every question in dispute. This is evident from his despatch of April 23d, 1845, to Mr. Buchanan, who had succeeded Mr. Calhoun as Secretary of State, and from other sources which are equally authentic. The opening of the Bay of Fundy, considered in itself alone, "though nominally confirming the interpretation of the treaty which the colonial authorities had set up, was," in fact, "a practical abandonment of it;" and we have the highest assurance that the British government "contemplated the further extension of the same policy by the adoption of a general regulation that American fishermen should be allowed freely to enter *all* bays of which the mouths were more than six miles wide." This intention was communicated to Lord Falkland by Lord Stanley in a despatch of May 19, 1845. The former, in his reply, dated June 17, requested that, as the plan had reference to matters deeply affecting the interests of Nova Scotia, and involved so many considerations to the elucidation of which local knowledge and information were essentially necessary, the negotiation might be suspended until he should have an opportunity of addressing the colonial secretary again. In a second despatch, written on the 2d of July, Lord Falkland observed that in previous communications he had very fully explained the reasons why he should deeply lament any relaxation of the construction of the treaty which would admit of the American fishing vessels carrying on their operations within three miles of a line drawn from headland to headland of the various bays on the coast of Nova Scotia, and that he did not then retract the opinions he had expressed on these occasions. He said, further, that, as much technical knowledge and verbal accuracy were required in treating the subject, he had directed the attorney general of the colony to prepare a report, which he enclosed, and to which he desired Lord Stanley's particular attention; and he remarked, in conclusion, that "he was convinced such relaxation of the treaty of 1818, as was apparently contemplated by Lord Aberdeen, would, if carried into effect, produce very deep-rooted dissatisfaction both in his own colony and in New Brunswick, and cause much injury to a very large and valuable class of her Majesty's subjects." A copy of the report of the Hon. J. W. Johnston, referred to by Lord Falkland, follows. American readers will fail to find the "technical knowledge and verbal

accuracy" indicated by his lordship; while, if they will turn to the arguments of Mr. Everett, to which it replies, they will also find that the positions of our minister are neither fairly met nor essentially weakened. It may be admitted that some points are stated with force and with fairness. But this document adds nothing to the reputation of the attorney general, who is justly considered to be an able man; for it is deficient in learning, upon the matters in controversy, deficient in "accuracy," in the statements of facts relative to the course and character of our fishermen, and in its tone and spirit hardly more to be admired than the common accounts of "American aggressions" which appear in the colonial newspapers.

Under date of June 16, 1845, Mr. Johnston says:

"MY LORD: Agreeably to your excellency's desire, I have the honor to report such suggestions as appear to arise from the despatch of the Right Hon. the Secretary of State for the colonies, dated 10th May last, and the correspondence accompanying it of the United States minister at London and her Majesty's government, on the subject of the fisheries on the coasts of her Majesty's North American provinces.

"The concession of a right to fish in the Bay of Fundy has been followed by the anticipated consequence, the demand for more extended surrenders, based upon what has been already gained; and it is to be feared that the relaxations now contemplated, if carried into effect, will practically amount to an unrestricted license to American fishermen.

"When their right to fish within the larger bays, or at the mouths of the smaller inlets, shall be established, the ease with which they may run into the shores—whether to fish, or for obtaining bait, or for drawing off the shoals of fish, or for smuggling—and the facility of escape before detection, notwithstanding every guard which it is within the means of the province to employ, will render very difficult the attempt to prevent violations of the remaining restrictions, while, in the case of *seizures*, the means of evasion and excuse, which experience has shown to be, under any circumstances, abundantly ready, will be much enlarged.

"An instance has just occurred which illustrates this apprehension, and confirms the observations to the same effect contained in the report I had the honor to make to your excellency on the 17th September last, on the same subject.

"An American fisherman, on the 5th of this month, was seized in the Bay of Fundy, at anchor '*inside* of the light-house at the entrance of Digby Gut,' about a quarter of a mile from the shore, his nets lying on the deck, still wet, and with the scales of herrings attached to the meshes, and having fresh herrings on board his vessel. The excuse sworn to is, that rough weather had made a harbor necessary; that the nets were wet from being recently washed; but that the fish were caught while the vessel was beyond three miles from the shore.

"Hence, too, will be extended and aggravated all the mischiefs to our fisheries from the means used by the Americans in fishing, as by jigging—drawing seines across the mouths of the rivers—and other expedients; from the practice of drawing the shoals from the shores, by baiting; and, above all, from their still more pernicious habit of throwing the garbage upon the fishing-grounds and along the shores.

"Every facility afforded the American fisherman to hold frequent, easy, and comparatively safe intercourse with the shores, extends



another evil, perhaps more serious in its results—the illicit traffic carried on under the cover of fishing—in which not only the revenue is defrauded, and the fair dealer discountenanced, but the coasts and remote harbors are filled with noxious and useless articles, as the poisonous rum and gin and manufactured teas, of which already too much is introduced into the country, in exchange for the money and fish of the settlers; and from this intercourse, when habitual and established from year to year, the moral and political sentiments of our population cannot but sustain injury.

“In the argument of the American minister his excellency appears to assume that the question turns on the force of the word ‘bay,’ and the peculiar expression of the treaty in connexion with that word; but although it was obviously the clear intention of its framers to keep the American fishermen at a distance of three marine miles from the ‘bays, creeks, and harbors,’ there does not, therefore, arise any just reason to exclude the word *coasts*, used in the same connexion in the treaty, from its legitimate force and meaning; and if it be an admitted rule of general law that the outline of a coast is to be defined, not by its indentations, but by a line extending from its principal headlands, then waters, although not known under the designation, nor having the general form of a bay, may yet be within the exclusion designed by the treaty.

“His excellency the American minister complains of the ‘*essential injustice*’ of the law of this province under which the fisheries are attempted to be guarded, and is pleased to declare that it ‘*possesses none of the qualities of the law of civilized states but its forms.*’

“His excellency, in using this language, possibly supposed that the colonial act had attempted to give a construction to the treaty of 1818, or had originated the penalty and mode of confiscation which he deprecates. But had his excellency examined the act of the province he has so strongly stigmatized, he would have discovered that, as regards the limits within which foreign fishermen are restricted from fishing, the colonial legislature has used but the words of the treaty itself, and a comparison of the provincial act with an act of the imperial Parliament, the 59 George III, ch. 38, would have shown him that, as regards the description of the offence, the confiscation of the vessel and cargo, and the mode of proceeding, the legislature of Nova Scotia has, in effect, only declared what was already, and still is, the law of the realm *under imperial enactments.*

“Mr. Everett adverts to what he considers ‘*the extremely objectionable character of the course pursued by the provincial authorities in presuming to decide for themselves a question under discussion between the two governments.*’

“But it is submitted, that if the American government controverted the construction given to the treaty, the course pursued on the part of Nova Scotia, which made confiscation dependent on a judicial trial and decision, was neither presumptuous nor inexpedient; nor could the necessity of security for £60, or the risk of costs, in case of failure, offer any serious impediment to the defence in a matter which, as Mr. Everett declares, the government of the United States deems of great national importance.

“Upon the other hand, if the American fishermen could only seek a relaxation of the construction given to the treaty in England and Nova Scotia, as a matter of *favor*, ‘*presumption*’ would rather seem to

lie on that side which insisted on enjoying the privilege *before* the boon was conferred.

"In any view of the matter, as the American fisherman was never meddled with until he had *voluntarily* passed the controverted limit, it is difficult to comprehend why the American minister's proposition would not stand *reversed* with more propriety than it exhibits in its present form; for his excellency's regret might not unreasonably, it would seem, have been expressed at '*the extremely objectionable course pursued by American subjects in presuming to decide for themselves a question under discussion between the two governments,*' by fishing upon the disputed grounds, and thereby reducing the provincial authorities to the necessity of vindicating their claim or seeing it trampled on, before any sanction had been obtained, either of legal decision or diplomatic arrangement.

"When Mr. Everett says that the necessity of fostering the interests of their fishermen rests on the highest ground of national policy, he expresses the sentiment felt in Nova Scotia as regards the provincial welfare in connexion with this subject. The Americans are fortunate in seeing the principle carried into practice; for the encouragement afforded their fishermen by the government of the United States is not small, and its strenuous, persevering, and successful efforts to extend their fishing privileges on her Majesty's coasts but too practically evince its desire and ability to promote this element of national and individual prosperity. As far as I can learn, a liberal tonnage bounty is given on their fishing craft, besides a bounty per barrel on the pickled fish—thus guarding the fisherman against serious loss, in case of the failure of his voyage; and he is, I believe, further favored by privileges allowed on the importation of salt and other articles, while a market is secured him at home which insures a profitable reward for the fruit of his labor by a protecting duty of five shillings per quintal on dry fish, equal to fifty per cent. of its value, and from one to two dollars per barrel on pickled fish, according to the different kinds, equal to at least twenty per cent. of their values.

"The duty on American fish imported into the colonies is much less, and the British colonial fisherman is unsustained by bounties; but the chief drawback to his success is the want of certain and staple markets, those on which he is principally dependent being very limited and fluctuating.

"In the contrast, therefore, drawn by Mr. Everett, between the advantages of the colonial and American fisherman, the extensive home-markets of the latter, independently of the encouragement he receives from bounties and other sources, much more than compensates, I believe, for any local conveniences enjoyed by the former.

"The colonists cannot understand the principle on which *concession*, in any form, should be granted to the American people in a case avowedly '*touching the highest grounds of national policy,*' even although concession did not involve consequences, as it unhappily does in the present case, both immediate and remote, most injurious to colonial interests.

"The strong and emphatic language of the treaty of 1818 is, that the United States 'renounce forever any liberty heretofore enjoyed or claimed by the inhabitants thereof to take, dry, or cure fish on, or within three marine miles of, any of the coasts, bays, creeks, or harbors of his Britannic Majesty's dominions in America not included



within the above-mentioned limits: provided, however, that the American fishermen shall be admitted to enter such bays and harbors for the purpose of shelter and of repairing damages therein, of purchasing wood and of obtaining water and for no other purpose whatever. But they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges hereby reserved to them.'

"If this national contract does not exclude the Americans from fishing within the *indentations* of our coasts and from our *bays and harbors*, the people of Nova Scotia, while it remained in force, could not complain of the exercise of the right.

"But we believe the treaty does exclude them, and we but ask a judicial inquiry and determination before these valuable privileges are relinquished: the highest law opinions in England have justified our belief—her Majesty's government, in theory, avows and maintains it.

"The compact, too, was in its nature reciprocal; and had the treaty, in this particular, been (as it was not) hard upon the United States, there may doubtless be found, in other parts of it, stipulations at least equally unfriendly to British interests.

"I repeat, my lord, we cannot understand *why the Americans should not be held to their bargain*; nor can we perceive the principle of justice or prudence which would relax its terms in favor of a foreign people whose means and advantages already preponderate so greatly, and that, too, without reciprocal concessions, and at the expense of her Majesty's colonial subjects, whose prosperity is deeply involved in the protection and enlargement of this important element of their welfare.

"If the present concessions to the United States are hoped to end and quiet the controversy between their fishermen and this province, there is too much reason to fear the expectation will end in disappointment. From the greater encouragement that will be given for violation of the treaty, under the modified conditions suggested to be imposed on the American fishermen, and from the multiplied facilities for evasion and falsehood, increased and not diminished occasions of collision can only be expected; and it may safely be asserted, from a knowledge of the subject and of the parties, that, unless the British government are content to maintain the strict construction of the treaty, as a mere question of past contract and settled right, whatever that construction may be, the encroachment of the American fishermen will not cease, nor disputes end, until they have acquired unrestricted license over the whole shores of Nova Scotia.

"It is hoped, my lord, that if an arrangement such as is contemplated should unhappily be made, its terms may clearly express that the American fishermen are to be excluded from fishing within three miles of the *entrance* of the bays, creeks, and inlets, into which they are *not* to be permitted to come.

"Some doubt on this point rests on the language of Lord Stanley's despatch, and the making the criterion of the restricted bays, creeks, and inlets to be the width of the double of three marine miles, would strengthen the doubt by raising a presumption that the shores of these bays, &c., and the shores of the general coast, were to be considered in the same light and treated on the same footing.

"To avoid such a construction, no less than to abridge the threatened evil, the suggestion made to your lordship by Mr. Stewart that at

least this width should be more than the double of three marine miles—say three or four times more—ought, I think, to be strongly enforced.

“I have the honor to be, your lordship’s most obedient servant,  
“J. W. JOHNSTON.

“To the Right Hon. His Excellency

“VISCOUNT FALKLAND, *Lieut. Governor, &c., &c., &c.*”

Meantime New Brunswick was as active to prevent the measures under consideration of the British ministry as her sister colony of Nova Scotia. The Hon. Charles Simonds, speaker of the House of Assembly, and a gentleman of great wealth and of high consideration in colonial circles, was deputed by the council of the first named possession of the crown to attend to its interests, and to remonstrate against further “concessions.” On his arrival in England he met the Hon. George R. Young, a distinguished personage of Nova Scotia, who was anxious to join him in behalf of his own colony. The Gaspé Fishing and Mining Company selected an agent to act with them, and the three gentlemen waited upon a member of the Board of Trade, to whom they communicated their views of the case.

Interviews with several other functionaries followed; and, finally, they met Lord Stanley, the secretary for the colonies, to whom Mr. Simonds, as the only one who was officially authorized to address his lordship, made “a strong representation” of the injurious consequences certainly to result to her Majesty’s American subjects, were the negotiations with Mr. Everett to be concluded on the basis proposed. The secretary assured him, in reply, that “nothing should be done to injure the colonies;” and Mr. Simonds, after his return to New Brunswick, stated his entire confidence in the effect of his “representations” to change the designs entertained by the ministry.

The liberal policy towards the United States, known to have had the positive sanction of the first minister of the crown, (the late Sir Robert Peel,) which was designed to remove all reasonable complaints on our part, was abandoned. It was defeated by the means here stated, and by memorials to the Queen, from merchants and others in New Brunswick and Nova Scotia, which we need not specially mention. Tidings of success soon reached the gratified colonists. On the 17th of September, 1845, Lord Stanley thus wrote to Lord Falkland:

“Her Majesty’s government have attentively considered the representations contained in your despatches Nos. 324 and 331, of the 17th of June and 2d of July, respecting the policy of granting permission to the fisheries of the United States to fish in the Bay of Chaleurs, and other large bays of a similar character on the coasts of New Brunswick and Nova Scotia; and apprehending from your statements that any such general concession would be injurious to the interests of the British North American provinces, we have abandoned the intention we had entertained on the subject, and shall adhere to the strict letter of the treaties which exist between Great Britain and the United States relative to the fisheries of North America, except in so far as they may relate to the Bay of Fundy, which has been thrown open to the North Americans under certain restrictions.

“In announcing this decision to you, I must, at the same time, direct your attention to the absolute necessity of a scrupulous observance of those treaties on the part of the colonial authorities, and to the danger which cannot fail to arise from any overstrained assumption of the



power of excluding the fishermen of the United States from the waters in which they have a right to follow their pursuits."

It is possible that, had our government seconded the efforts of our minister at the Court of St. James, and had instructed him, in positive and earnest terms, that the pretensions and claims of the colonists, which were at last adopted by the British government, had not been, and never would be, admitted as a just and proper commentary on the convention of 1818, the despatch from which the preceding extract is made would never have been written; and that of consequence the excitement and difficulties of 1852 would never have occurred. As it was, the children of the "tories" triumphed over the children of the "whigs" of the Revolution.

The events of 1846, and of the three succeeding years, will not detain us but a moment. The seizure and total loss of several American vessels, and the renewed efforts of the Nova Scotia House of Assembly to close the Strait of Canso, for reasons stated in three annual reports of committees of that body, are the most important, and all which we need notice.

As we open upon the occurrences of 1851 we are met with a *fourth* report on the very *humane* and favorite plan of closing Canso, which, for reasons presently to appear, should be preserved in these pages.

"The committee appointed to consider the question of the navigation by foreign vessels of the Gut of Canso, beg leave to report as follows:

"The question submitted to your committee involves the consideration, first, of the right of the legislature of this province to impose restrictions or obstructions upon foreign vessels wishing the use of the passage; and secondly, the policy of imposing any, and what, restrictions or obstructions. Your committee, in the consideration of the first point, are aided materially by the action of a committee of this house in the year 1842, who prepared a series of questions which were submitted by Lord Falkland to the colonial secretary, and by him to the law officers of the crown in England, upon the general subject of the rights of fishery as reserved to this country by the treaty with the United States in the year 1818, and also respecting the navigation of the Gut of Canso. As the consideration of your committee has been solely directed to the latter point, it is unnecessary to advert to the issues raised upon the other points. The investigation is, therefore, confined to the fourth question submitted—that is to say, Have vessels of the United States of America, fitted out for the fishery, a right to pass through the Gut or Strait of Canso, which they cannot do without coming within the prescribed limits, or to anchor there or to fish there; and is casting bait to lure fish in the track of the vessel, fishing within the meaning of the convention?

"This question, with the others, was suggested by the consideration of a remonstrance from Mr. Stevenson, then United States minister in England, dated 27th of March, 1841, addressed to Lord Palmerston, then and now Foreign Secretary, against the seizure of fishing vessels belonging to citizens of the United States for alleged breaches of the terms of the convention of 1818, a copy of which was forwarded to Lord Falkland, then lieutenant-governor of this province, and submitted by him to the legislature of 1842. This note contains the following observations in respect to the navigation of the Gut of Canso: 'It may be proper, also, on this occasion to bring to the notice of her Majesty's

government the assertion of the provincial legislature, that "the Gut or Strait of Canso is a narrow strip of water, completely within and dividing several counties of the province," and that the use of it by the vessels and citizens of the United States is in violation of the treaty of 1818. This strait separates Nova Scotia from the island of Cape Breton, which was not annexed to the province until the year 1820. Prior to that, in 1818, Cape Breton was enjoying a government of its own, distinct from Nova Scotia, the strait forming the line demarcation between them; and being then, as now, a thoroughfare for vessels passing into and out of the Gulf of St. Lawrence. The union of the two colonies cannot, therefore, be admitted as vesting in the province the right to close a passage which has been freely and indisputably used by the citizens of the United States since the year 1783. It is impossible, moreover, to conceive how the use on the part of the United States of the right of passage, common, it is believed, to all nations, can in any manner conflict with the letter or spirit of the existing treaty stipulations.'

"The questions having been previously forwarded by Lord Falkland to Lord John Russell, Lord Falkland, on the 8th of May, 1841, addressed to Lord John Russell a very able despatch on the general subject of the fisheries, in which previous provincial legislation was satisfactorily vindicated from charges made by Mr. Stevenson for the seizure, improperly, of American fishing vessels; and clearly showed that the provincial legislation was founded upon and sustained by previous imperial acts upon the same subject; and which despatch most completely silenced any further complaints of a like nature. This despatch also refers to the navigation of the Gut of Canso, upon which Lord Falkland therein remarks, in answer to Mr. Stevenson, 'Her Majesty's exclusive property and dominion in the Strait of Canso is deemed maintainable upon the principles of international law already referred to, and which it is considered will equally apply, whether the shore on each side form part of the same province, or of different provinces belonging to her Majesty. This strait is very narrow, not exceeding, in some parts, one mile in breadth, as may be seen on the admiralty chart; and its navigation is not necessary for communication with the space beyond, which may be reached by going round the island of Cape Breton.'

"Lord Falkland again says: 'I have now, I trust, established, that if the interpretation put upon the treaty by the inhabitants of Nova Scotia is an incorrect one, they are sincere in their belief of the justice and interpretation, and most anxious to have it tested by capable authorities; and further, that if the laws passed by the provincial legislature are really of the oppressive nature they are asserted to be by Mr. Stevenson, they were enacted in the belief that the framers of them were doing nothing more than carrying out the views of the home government as to the mode in which the colonists should protect their own dearest interests. I enclose a copy of the proclamation containing the act of the 6th William IV, of which Mr. Stevenson complains; and any alteration in its provisions, should such be deemed necessary, may be made early in the next session of the provincial Parliament.'

"The opinion of the Queen's advocate and her Majesty's attorney general on the case drawn up by Lord Falkland, and upon the questions submitted by the committee, was enclosed by Lord Stanley to



Lord Falkland, accompanied by a despatch dated the 28th of November, 1842. The opinion of the law officers of the crown, sustained as it was by the British government, upon the point now under discussion, is as follows: 'By the convention of 1818, it is agreed that American citizens should have the liberty of fishing in the Gulf of St. Lawrence, and within certain defined limits, in common with British subjects, and such convention does not contain any words negating the right to navigate the passage of the Gut of Canso, and therefore it may be conceded that such right of navigation is not taken away by that convention; but we have attentively considered the course of navigation to the gulf by Cape Breton, and likewise the capacity and situation of the passage of Canso, and of the British dominions on either side, and we are of opinion that, independently of treaty, no foreign country has the right to use or navigate the passage of Canso, and attending to the liberty of fishery to be enjoyed by American citizens. We are also of opinion that the convention did not, either expressly or by necessary implication, concede any such right of using or navigating the passage in question.'

"The opinion of the British government, resting upon that of the law officers of the crown, is, therefore, clearly expressed to the head of the government of this province, for his direction and guidance, and that of the legislature. The case is decided after a full examination of the arguments on both sides. Mr. Stevenson complains of the exercise of the right asserted by the government here to control the 'passage of Canso.' Lord Falkland submitted his views, as well as those of the committee, in opposition to those of Mr. Stevenson; and the decision is unequivocally against the American claim. It will be observed that Mr. Stevenson rests his opposition to the right claimed principally upon the fact that the island of Cape Breton was a distinct colony at the time of the convention of 1818; and hence argues that the province of Nova Scotia, not having then the *sole* right to the waters of the Gut of Canso, could not now claim to exercise an unlimited control. Admitting that such did *not* then exist, it is clear that if a common right is enjoyed solely by two parties, their union would give complete control; and it may be fairly contended that Nova Scotia and Cape Breton, being now under one government, possess the same powers united as they did before the union, as respects third parties; and that the effect of the union only operates to prevent antagonistic action relatively between them. The law officers of the crown, however, take higher ground, and insist, first, that no foreign power has any such right as that contended for by Mr. Stevenson, unless conveyed by treaty; and, secondly, that no such right is conferred by the treaty of 1818 to American citizens. Having such high authority in favor of the existing control of the navigation of the passage in question, it might be considered as conclusively settled; but as this exclusive right is contested on the part of the American government, the opinion of the late Chancellor Kent, an American jurist of the highest standing, in favor of the exercise of that right, as given in a chapter of his celebrated Legal Commentaries upon the Law of Nations, is of peculiar value and importance. That distinguished lawyer, in the work just mentioned, treating at large upon this subject, says:

" 'It is difficult to draw any precise or determinate conclusion amidst the variety of opinions as to the distance to which a State may lawfully

extend its exclusive dominion over the sea adjoining its territories, and beyond those portions of the sea which are embraced by harbors, gulfs, bays, and estuaries, and over which its jurisdiction unquestionably extends. All that can be reasonably asserted is, that the dominion of the sovereign of the shore over the contiguous sea extends as far as is requisite for his safety and for some lawful end. A more extended dominion must rest entirely upon force and maritime supremacy. According to the current of modern authority, the general territorial jurisdiction extends into the sea as far as cannon-shot will reach, and no farther, and this is generally calculated to be a marine league; and the Congress of the United States have recognised this limitation by authorizing the district courts to take cognizance of all captures made within a marine league of the American shores. The executive authority of this country, in 1793, considered the whole of Delaware bay to be within our territorial jurisdiction, and it rested its claim upon those authorities which admit that gulfs, channels, and arms of the sea belong to the people with whose land they are encompassed. It was intimated that the law of nations would justify the United States in attaching to their coasts an extent into the sea beyond the reach of cannon-shot. Considering the great extent of the line of the American coasts, we have a right to claim for fiscal and defensive regulations a liberal extension of maritime jurisdiction; and it would not be unreasonable, as I apprehend, to assume, for domestic purposes connected with our safety and welfare, the control of the waters on our coast, though included within lines stretching from quite distant headlands, as, for instance, from Cape Ann to Cape Cod, and from Nantucket to Montauk point, and from that point to the capes of the Delaware, and from the south cape of Florida to the Mississippi. It is certain that our government would be disposed to view with some uneasiness and sensibility, in the case of war between other maritime powers, the use of the waters of our coast far beyond the reach of cannon-shot as cruising ground for belligerent purposes. In 1793, our government thought they were entitled, in reason, to as broad a margin of protected navigation as any nation whatever, though at that time they did not positively insist beyond the distance of a marine league from the sea shores; and in 1806 our government thought it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and the natural indication furnished by the well-defined path of the Gulf stream, to except an immunity from belligerent warfare for the space between that limit and the American shore.'

"From the foregoing extract it will be observed that Chancellor Kent agrees with the principles put forth by the law officers of the crown, and which justify the conclusion 'that no foreign power, independently of treaty, has any right to navigate the passage of Canso.' Having thus, by the highest legal authorities of England and the United States, been borne out in the assumption that no foreign power has any such right, the next inquiry is, as to where the power of controlling the passage of Canso exists. By the act of 1820, Cape Breton was annexed to Nova Scotia, and has since that period formed a part of this province, which for nearly a century has enjoyed a representative form of government, and which, in making laws, is only controlled by the operation of imperial statutes and the veto of the crown. The right to make laws to affect navigation, except the registry of ships, has been enjoyed and acted upon by this legislature. Various laws



have also been enacted making regulations for setting nets, and in other respects for regulating the fisheries in our bays and creeks. Statutes have also been passed here, and assented to in England, for collecting light duties in the Gut of Canso, and American and other foreign, and also British and colonial vessels, have been brought within the operation of those statutes. The right, therefore, to legislate in respect of the fisheries and in respect of the navigation of the Gut of Canso, has not only been confirmed in England, but has been acknowledged in America in the payment of light duties.

"The legislature of Nova Scotia may, therefore, be fairly said to have the right to pass enactments either to restrict or obstruct the passage of foreign vessels through the Gut of Canso.

"The second point, as to the policy of imposing *further* restriction upon foreign vessels passing through the Gut of Canso, is yet to be considered.

"In the consideration of that question, the treaty of 1818 affords the best means of arriving at a sound conclusion. The American government, by it, relinquish all right of fishery within three marine miles of the coasts, bays, creeks, or harbors of this province; and under the construction put upon that clause in England, upon the same principle of international law as is acknowledged and insisted upon by the American government, the American citizens, under the treaty, have no right, for the purpose of fishery, to enter any part of the Bay of St. George lying between the headlands formed by Cape George on the one side and Port Hood island on the other. American fishermen, therefore, when entering that bay for fishing purposes, are clearly violating the terms of the treaty. It may be said that the Gut of Canso affords a more direct and easy passage to places in the Gulf of St. Lawrence, where American fishermen would be within the terms of the treaty; but that is no good reason why this legislature should permit them to use that passage, when their doing so is attended with almost disastrous consequences to our own fishermen. Were there no other means of getting upon the fishing grounds, in the produce of which they are entitled to participate, the Americans might then assert a right of way, from necessity, through the Gut of Canso. When that necessity does not exist, it would be unwise any longer to permit American fishing vessels to pass through the Gut of Canso, for the following, among many other reasons that could be given, if necessary: In the month of October, the net and seine fishery of mackerel in the Bay of St. George is most important to the people of that part of the country, and requires at the hands of the legislature every legitimate protection. Up to this period American fishermen, using the passage of the Gut of Canso, go from it into St. George's bay, and not only throw out bait to lure the fish from the shores where they are usually caught by our own fishermen, but actually fish in all parts of that bay, even within one mile of the shores. It is also a notorious fact that the American fishing vessels in that bay annually destroy the nets of the fishermen by sailing through them, and every year in that way do injury to a great extent—and this upon ground which they have no right to tread. Remonstrances have therefore been made to the American government against such conduct; but the answer has invariably been, to protect ourselves in that respect. Had the United States government adopted suitable measures to prevent its citizens from trespassing as before mentioned,

it would not be necessary for this legislature to put any restrictions upon their use of the passage in question; but as the onus has been thrown upon this legislature, it is clearly its duty to adopt the most efficient and least expensive means of protection. If the privilege of passage is exercised through the Gut of Canso and the bay in question, it is next to impossible to prevent encroachments and trespasses upon our fishing grounds by American citizens, as it would require an expensive coast-guard by night and day to effect that object, and then only partial success would result. It would be unreasonable to tax the people of this country to protect a right which should not be invaded by foreigners, and which can only be invaded and encroached upon by our permitting foreigners to use a passage to which they are not entitled. Without, therefore, any desire unnecessarily to hamper American citizens in the enjoyment of that to which they are justly entitled, your committee consider it their imperative duty to recommend such measures for the adoption of the House as will in the most effectual way protect the true interests of this country. The outlay necessarily required to watch properly the operations of foreign fishing vessels in the Bay of St. George, so as to prevent encroachments, amounts to a prohibition of its being accomplished; and it therefore becomes indispensable that such vessels be prohibited from passage *through* the Gut of Canso. The strait will always be, to vessels of all classes, a place of refuge in a storm, and American fishing vessels will be entitled to the use of it as a harbor for the several purposes mentioned in the treaty. It can be visited for all those purposes without a passage through being permitted; and your committee therefore recommend that an act be passed authorizing the governor, by and with the advice of his executive council, by proclamation, either to impose a tax upon foreign fishing vessels for such amount as may be provided in the act, or to prohibit the use of such passage altogether."

It is of consequence to remark, that, as far as there is evidence before the public, the fisheries were not once mentioned by Mr. McLane, (who succeeded Mr. Everett,) in his correspondence with the British government, during his mission. Nothing, in fact, seems to have passed between the two cabinets relative to the subject for more than six years, though England retraced no step after opening the Bay of Fundy. Our public documents do show, however, that, between the years 1847 and 1851, overtures were made to our government for "a free interchange of all natural productions" of the United States and of the British American colonies with each other, either by treaty stipulations or by legislation. In the first-mentioned year, Canada passed an act embracing this object, which was to become operative whenever the United States should adopt a similar measure. A bill to meet the act of Canada was introduced into Congress, and pressed by its friends, for three successive sessions, but failed to become a law. That the people of Canada were "disappointed," is a fact officially communicated to Mr. Webster, Secretary of State, by Sir Henry Bulwer, the British minister. It is not impossible that the existence of this feeling will sufficiently explain why the Canadian government became a party to the following agreement, which was signed at Toronto, on the 21st of June, 1851, at a meeting



of colonial delegates, by the president of the executive council of Canada and the Hon. Joseph Howe,\* secretary of Nova Scotia:

"Mr. Howe having called the attention of his excellency and the council to the importance and value of the gulf fisheries, upon which foreigners largely trespass, in violation of treaty stipulations, and Mr. Chandler having submitted a report of a select committee of the House of Assembly of New Brunswick, having reference to the same subject, the government of Canada determines to co-operate with Nova Scotia in the efficient protection of the fisheries, by providing either a steamer or two or more sailing vessels to cruise in the Gulf of St. Lawrence and along the coasts of Labrador.

"It is understood that Nova Scotia will continue to employ at least two vessels in the same service, and that Mr. Chandler will urge upon the government of New Brunswick the importance of making provision for at least one vessel to be employed for the protection of the fisheries in the Bay of Fundy."

Canadian fishermen are by no means numerous; and the zeal thus manifested to aid Nova Scotia in preventing the "violation of treaty stipulations" could hardly have been awakened by the misdeeds of "foreigners" on the fishing grounds of the "gulf." The motive is to be sought elsewhere. Just three days after the date of the above agreement, the British minister † addressed a note to Mr. Webster, in which the previous propositions on the subject of reciprocal trade between the United States and the British colonies are discussed at some length, and the overture for an arrangement is renewed. He enclosed an official communication from Lord Elgin, the governor general, and other papers, which gave details of the plan as then entertained. This plan embraced no concessions with regard to "the fisheries in estuaries and in the mouths of rivers," and suggested no changes on the coast or banks of Newfoundland; but, on condition that the United States would admit "all fish, either cured or fresh, imported from the British North American possessions in vessels of any nation or description, free of duty, and upon terms, in all respects, of equality with fish imported by citizens of the United States," her Majesty's government were prepared "to throw open to the fishermen of the United States the fisheries in the waters of the British North American colonies, with permission to those fishermen to land on the coasts of those colonies for the purpose of drying their nets and curing their fish, provided that, in so doing, they do not interfere with

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\* This gentleman is of loyalist descent. John Howe, his father, was a citizen of Boston, and published there the "Massachusetts Gazette and Boston News Letter," a paper which, in the revolutionary controversy, took the side of the crown. At the evacuation of that town by the royal army, he accompanied it to Halifax, where he resumed business, became king's printer, and died at a good old age in 1835. His son, mentioned in the text, was educated a printer, and conducted a newspaper for several years. As the acknowledged leader of the "liberals" of Nova Scotia, he possessed great influence; but as a member of Lord Falkland's *coalition* cabinet, lost popularity with his party. His letters to Lord John Russell, in 1846, evince great ability, but contain demands on the home government which are irreconcilable with colonial dependence. These papers show that the Hon. Secretary is somewhat familiar with the writings of the "*rebels*" of his father's time, and that what was treason *then*, and with *them*, is entirely right *now*, and with the descendants of their opponents.

† Documents accompanying President's message, December, 1851, part I, pp. 89, 90.

the owners of private property or with the operations of British fishermen."

Her Majesty's minister desired Mr. Webster to inform him whether our government was disposed to enter upon negotiations and conclude a convention, on the terms suggested, or whether, preferring legislation, an urgent recommendation would be made to Congress, at the earliest opportunity. The President declined to negotiate; but in his annual message, December, 1851, he said: "Your attention is again invited to the question of reciprocal trade between the United States and Canada and other British possessions near our frontier. Overtures for a convention upon this subject have been received from her Britannic Majesty's minister plenipotentiary, but it seems to be in many respects preferable that the matter should be regulated *by reciprocal legislation*. Documents are laid before you, showing the terms which the British government is willing to offer, and *the measures which it may adopt, if some arrangement upon this subject shall not be made.*"

Months passed away; "Congress did nothing, said nothing, thought nothing on the subject,"\* and the parties to the Toronto agreement became impatient. In March, 1852, the committee on the fisheries of Nova Scotia, in a report to the House of Assembly, unanimously recommended a sufficient sum to be placed at the disposal of the executive of the colony, to employ four fast-sailing vessels during the fishing season, with authority to seize all foreign vessels found employed within the prescribed limits; and they recommended, also, the adoption of measures to enlist the aid of the home government, and secure the co-operation of naval steam-vessels. This plan was substantially executed by the Assembly. The government of Canada promptly followed, and a vessel to cruise in the Gulf of St. Lawrence was ready for sea early in May. New Brunswick was tardy, but the authorities of that colony were reminded of their duty by the newspaper press, and finally fitted out two vessels. Prince Edward Island furnished one vessel, and Newfoundland, though not included in the arrangements at Toronto, joined the movement. In June, the colonists received assurances from Sir John Packington, the secretary for the colonies, that "among the many pressing subjects which have engaged the attention of her Majesty's ministers since their assumption of office, few have been more important, in their estimation, than the questions relating to the protection solicited for the fisheries on the coasts of British North America;" and that "her Majesty's ministers are desirous to remove all grounds of complaint on the part of the colonies, in consequence of the encroachments of the fishing vessels of the United States upon those waters, from which they are excluded by the terms of the convention of 1818; and they therefore intend to despatch, as soon as possible, a small naval force of steamers, or other small vessels, to enforce the observance of that convention."

The controversy was now rapidly approaching a crisis. As was subsequently said by a distinguished statesman,† "this whole matter is to be explained as a stroke of policy. It may be a dangerous step to be taken by the British government, and the colonies may be

\* Speech of Hon. W. H. Seward in the Senate of the United States, August 14, 1852.

† Hon. John Davis, of Massachusetts—speech in the Senate United States, August, 1852.



playing a game which will not advance materially the interests they have in view."

On the 5th of July, Mr. Crampton, the successor of Sir Henry Bulwer, announced to the President, in a note addressed to the Secretary of State, that he had "been directed by her Majesty's government to bring to the knowledge of the government of the United States a measure which has been adopted by her Majesty's government to prevent a repetition of the complaints which have so frequently been made of the encroachments of vessels belonging to citizens of the United States and of France, upon the fishing-grounds reserved to Great Britain by the convention of 1818.

"Urgent representations have been addressed to her Majesty's government by the governors of the British North American provinces, in regard to these encroachments, whereby the colonial fisheries are most seriously prejudiced, directions have been given by the lords of her Majesty's admiralty for stationing off New Brunswick, Nova Scotia, Prince Edward Island, and the Gulf of St. Lawrence, such a force of small sailing vessels and steamers as shall be deemed sufficient to prevent the infraction of the treaty. It is the command of the Queen, that the officers employed upon this service should be especially enjoined to avoid all interference with the vessels of friendly powers, *except where they are in the act of violating the treaty*, and on all occasions to avoid giving ground of complaint by the adoption of harsh or unnecessary proceedings, when circumstances compel their arrest or seizure."

Mr. Webster, in a paper dated at the Department of State, on the following day, and published in the Boston Courier of the 19th of July, after citing various documents which refer to the policy of the administration of Lord John Russell, and to that of his successor, the Earl of Derby, touching the colonial fisheries, quotes from another document, that "The vessels-of-war mentioned in the above circular despatches are expected to be upon the coasts of British North America during the present month, (July) when, no doubt, seizures will begin to be made of American fishing vessels, which in the autumn pursue their business in indents of the coast, from which it is contended they are excluded by the convention of 1818.

"Meantime, and within the last ten days, an American fishing vessel called the 'Coral,' belonging to Machias, in Maine, has been seized in the Bay of Fundy, near Grand Menan, by the officer commanding her Majesty's cutter 'Netley,' already arrived in that bay, for an alleged infraction of the fishing convention; and the fishing vessel has been carried to the port of St. John, New Brunswick, where proceedings have been taken in the admiralty court, with a view to her condemnation and absolute forfeiture.

"Besides the small naval force to be sent out by the imperial government, the colonies are bestirring themselves also for the protection of their fisheries. Canada has fitted out an armed vessel, to be stationed in the gulf; and this vessel has proceeded to the fishing-grounds, having on board not only a naval commander and crew, with power to seize vessels within limits, but also a stipendiary magistrate and civil police, to make prisoners of all who are found transgressing the laws of Canada, in order to their being committed to jail, in that colony for trial.

"The colony of Newfoundland has fitted out an armed vessel for the purpose of resisting the encroachments of French fishing vessels on the coast of Labrador; but when ready to sail from her port, the governor of that colony, acting under imperial instructions, refused to give the commander of this colonial vessel the necessary authority for making prize of French vessels found trespassing. This is an extraordinary circumstance, especially when taken in connexion with the fact that the like authority to seize *American* fishing vessels, under similar circumstances, has never been refused to the cruisers of any of the North American colonies.

"The colony of Nova Scotia has now four armed cruisers, well manned, on its coasts, ready to pounce upon any American vessels who may, accidentally or otherwise, be found fishing within the limits defined by the crown officers of England.

"New Brunswick has agreed with Canada and Nova Scotia to place a cutter in the Bay of Fundy to look after American fishermen there; and at Prince Edward Island, her Majesty's steam-frigate '*Devastation*' has been placed, under the instructions of the governor of that colony."

Mr. Webster then recites the first article of the convention of 1818, and concludes in the following terms:

"It would appear that by a strict and rigid construction of this article, fishing vessels of the United States are precluded from entering into the bays or harbors of the British provinces, except for the purposes of shelter, repairing damages, and obtaining wood and water. *A bay, as is usually understood, is an arm or recess of the sea, entering from the ocean between capes or headlands; and the term is applied equally to small and large tracts of water thus situated. It is common to speak of Hudson's Bay, or the Bay of Biscay, although they are very large tracts of water.*

"The British authorities insist that England has a right to draw a line from headland to headland, and to capture all American fishermen who may follow their pursuits inside of that line. *It was undoubtedly an oversight in the convention of 1818 to make so large a concession to England, since the United States had usually considered that those vast inlets or recesses of the ocean ought to be open to American fishermen, as freely as the sea itself, to within three marine miles of the shore.*

"In 1841, the legislature of Nova Scotia prepared a case for the consideration of the advocate general and attorney general of England, upon the true construction of this article of the convention. The opinion delivered by these officers of the crown was, 'That by the terms of the convention, American citizens were excluded from any right of fishing within three miles from the coast of British America, and that the prescribed distance of three miles is to be measured from the headlands or extreme points of land next the sea, of the coast or of the entrance of bays or indents of the coast, and consequently that no right exists on the part of American citizens to enter the bays of Nova Scotia, there to take fish, although the fishing, being within the bay, may be at a greater distance than three miles from the shore of the bay; as we are of opinion that the term '*headland*' is used in the treaty to express the part of the land we have before mentioned, including the interior of the bays and the indents of the coast.'

"It is this construction of the intent and meaning of the convention of 1818 for which the colonies have contended since 1841, and which



they have desired should be enforced. This the English government has now, it would appear, consented to do, and the immediate effect will be the loss of the valuable fall fishing to American fishermen; a complete interruption of the extensive fishing business of New England, attended by constant collisions of the most unpleasant and exciting character, which may end in the destruction of human life, in the involvement of the government in questions of a very serious nature, threatening the peace of the two countries. *Not agreeing that the construction thus put upon the treaty is conformable to the intentions of the contracting parties*, this information is, however, made public to the end that those concerned in the American fisheries may perceive how the case at present stands, and be upon their guard. The whole subject will engage the immediate attention of the government.

"DANIEL WEBSTER,  
"Secretary of State."

This paper attracted immediate and universal attention. On the 23d of July Mr. Mason, chairman of the Committee on Foreign Relations, offered a resolution in the Senate of the United States, requesting the President to communicate to that body, "if not incompatible with the public interest, all correspondence on file in the executive department, with the government of England or the diplomatic representative, since the convention between the United States and Great Britain of October 20, 1818, touching the fisheries on the coast of British possessions in North America, and the rights of citizens of the United States engaged in such fisheries secured by the said convention; and that the President be also requested to inform the Senate whether any of the naval forces of the United States have been ordered to the seas adjacent to the British possessions of North America, to protect the rights of American fishermen, under the convention, since the receipt of the intelligence that a large and unusual British naval force has been ordered there to enforce certain alleged rights of Great Britain under said convention."

This resolution was agreed to unanimously. The debate which preceded its passage was highly animated. Mr. Mason is reported to have said, that "he had thought it his duty, considering the present aspect of affairs, so far as they are communicated to us by the public journals, to submit this resolution, and ask that it be considered immediately. We are informed, (he said,) unofficially, but yet in a manner clearly indicating that it is correct, that the British government has recently asserted rights under the convention of 1818 in relation to the fisheries of the North, which, whether they exist or not, they suffered from 1818 to 1841; and when the question was moved as to the respective rights of British subjects and American citizens under the treaty of 1818, they still suffered to remain *in statu quo*. The British government knew well that very large and important interests are embarked by citizens of the United States by these fisheries. They knew that the harbors, coasts, and seas of their possessions in North America swarm, at stated seasons of the year—and this, as he was informed, was one of these reasons—with these fishing vessels. Yet suddenly, without notice of any kind, we are informed from the public journals, and semi-officially by a sort of proclamation from the Secretary of State, that a very large British naval force has been ordered into these seas for the pur-

pose of enforcing, at the mouth of the cannon, the construction which Great Britain has determined to place on that convention."

Mr. Mason said: "I had supposed, in this civilized age and between two such countries as Great Britain and the United States, that were it the purpose of England to revive her construction of the convention and require that it should be enforced, ordinary national courtesy would have required that notice should have been given of that determination on the part of Great Britain. But, sir, when no such notice is given—when, on the contrary, the first information which reaches us is that Great Britain has ordered into these seas a large naval force for the purpose of enforcing this alleged right, I know not in what light it may strike senators; for it strikes me as a far higher offence than a breach of national courtesy—as one of insult and indignity to the whole American people. This morning, in the first paper I took up, from the North, I see extracted from one of the British colonial newspapers, printed at St. John, New Brunswick, a formal statement of the actual naval forces ordered by Great Britain into those seas. It consists of the Cumberland, a seventy-gun ship, commanded by Sir G. F. Seymour, who, I believe, is a British admiral, commanding on the West Indian station; and then follows an enumeration of steam-vessels, sloop-of-war, and schooners, and the entire number, nineteen, ordered to rendezvous there, and with the utmost despatch. For what purpose?

"To enforce at once, and without notice to this government, so far as I am informed; and yet we have some information through the quasi proclamation of the Secretary of State, at the mouth of the cannon, of the construction which the British government places on that convention. I do not know what view has been taken by the President of this extraordinary movement; but I think I do know what the American people would demand of the Executive, under such circumstances. If there be official or satisfactory information to the Executive that this extraordinary naval armament has been ordered by Great Britain into the North American seas, for the purpose of executing instantly the construction which Great Britain places on the convention, I say the American people will demand of their Executive that all the force of the home squadron shall be ordered there instantly, to protect American fishermen. Sir, we have been told by the poet who most deeply read the human heart, that

'From the nettle danger  
We pluck the flower safely.'

And if I may be told there is danger of collision, I would answer at once, there is no danger; but if there were, it becomes the Executive immediately to resent that which can only be looked on as an indignity and insult to the nation. I have no fears, Mr. President, that war is to follow the apparent collision which has taken place between the two governments. I confess I feel deeply the indignity that has been put upon the American people in the ordering of the British squadron into those seas without notice; and if I read the feelings of our people aright, they will demand that a like force shall be instantly sent there in order that the rights of our people may be protected.

"Sir, I do not profess the power to construe the purposes on the part of the British government. I was very much impressed by a despatch which I saw in one of the late papers, but which unfortunately I have



not at hand. Within the last few days a despatch has been received from the foreign office of Great Britain to the colonial office, advising it of this movement, and advising that it was one requiring celerity and despatch, and requiring that measures should be taken by the colonial office to procure concert between the British naval forces and the colonial authorities. The reason assigned was, that this measure was taken on the part of Great Britain as preliminary to certain negotiations. Now, what does this mean? I know not what these negotiations are; but if it means anything, it means that we are to negotiate under *duress*.

"Aye, sir, at this day this great people, covering a continent numbering thirty millions, are to negotiate with a foreign fleet on our coast. I know not what the President has done, but I claim to know what the American people expect of him. I know that if he has done his duty, the reply to this resolution of inquiry will be—I have ordered the whole naval force of the country into those seas, to protect the rights of American fishermen against British cruisers! I hope it will be the pleasure of the Senate to consider the resolution immediately.

Several senators followed Mr. Mason, and spoke in similar terms.

"Mr. Hamlin agreed to every word uttered by the chairman of the Committee on Foreign Relations, and he was grateful to the senator for having introduced the resolution. What the object of the British armament sent to the fishing shores was, he could not say; but that it had some ulterior object, was certain. It had been whispered that it was connected with certain negotiations with respect to a reciprocity trade with the colonies. If this were so, it was nothing more nor less than to compel the United States to legislate under *duress*, and to this he, for one, was unwilling to submit.

"Mr. Cass gave his full concurrence to all that had fallen from Mr. Mason, and he heartily approved of the resolution. He was gratified at hearing that senator's remarks, which were equally statesmanlike and patriotic. He had never before heard of such proceeding as that now adopted by England. No matter what the object of the force was, there was one thing certain—the American people would not submit to surrender their rights. This treaty was now over thirty years old, and it recognised clearly the right of Americans to fish within three miles of any shore. This had been conceded for thirty years. If there was any doubt about it, it could be settled by negotiations.

"Mr. Pratt said this appeared to him more likely to result in war than did the late difficulty. The English government has decided upon a treaty construction. England don't want to negotiate, for she has sent a large force to execute her construction of the treaty. Americans are to be expelled from rights which they have enjoyed for thirty years, under what their government has at all times and now declares to be the proper construction of the treaty. Ought not a force to be sent there to protect them in those rights which this treaty has declared to be theirs? Certainly there ought.

"Mr. Davis said, by the newspapers it would appear that the Secretary of State and the British minister, who had gone to Boston, were now consulting on this matter, and he thought, from this fact, that there was little apprehension but that the matter would be settled amicably. He had no difficulty at arriving at the object of the movement. The senator from Maine, he thought, had touched the key to

the whole. He would not hesitate to act on a bill proposing a proper and suitable principle of reciprocity.

"Mr. Seward would vote with pleasure for the resolution. It was limited to two objections: to obtain information as to diplomatic correspondence on the subject, and whether any naval force had been sent to the seas where the difficulty had arisen. The importance of these fisheries was conceded by all, and no one State was more interested in them than another. It was well known that any attempt to drive our fishermen from these fisheries would involve the whole country in a blaze of war, in which case his State would be deeply interested.

"Mr. Rusk said that if the object of that naval force by Great Britain was to bring about a reciprocity of trade, no matter how favorably he ought to look on such a proposition otherwise, he would never give it his assent under the *duress* of British cannon. He thought the domineering spirit of England ought to be met promptly."

On the 25th of July, and two days after the resolution passed the Senate, the Secretary of State was publicly received at his family home, Marshfield, Massachusetts. In the course of his reply to an address by the Hon. Seth Sprague, he is reported to have spoken in reference "to recent occurrences, threatening disturbances to this country, on account of the fisheries," in these words:

"It would not become me to say much on that subject, until I speak officially, and under direction of the head of the government. And then I *shall* speak. In the mean time, be assured that that interest will not be neglected by *this administration*, under any circumstances. The fishermen shall be protected in all their rights of property, and in all their rights of occupation. To use a Marblehead phrase, they shall be protected 'hook and line, and bob and sinker.' And why should they not? They are a vast number who are employed in that branch of naval enterprise. Many of the people of our own town are engaged in that vocation. There are among you some, who, perhaps, have been on the Grand Bank for forty successive years. There they have hung on to the ropes, in storm and wreck. The most important consequences are involved in this matter. Our fisheries have been the very nurseries of our navy. If our flag-ships have met and conquered the enemy on the sea, the fisheries are at the bottom of it. The fisheries were the seeds from which these glorious triumphs were born and sprung.

"Now, gentlemen, I may venture to say one or two things more on this highly important subject. In the first place, this sudden interruption of the pursuits of our citizens, which had been carried on more than thirty years, without interruption or molestation, can hardly be justified by any principle or consideration whatever. It is now more than thirty years that they have pursued the fisheries in the same waters and on the same coast, in which, and along which, notice has now come that they shall be no longer allowed these privileges. Now, such a thing cannot be justified without previous notice having been given. A mere indulgence of long continuance, even if the privilege were *but* an indulgence, cannot be withdrawn at this season of the year, when our people, according to the custom, have engaged in the business, without notice—without just and seasonable notice.



"I cannot but think the late despatches from the colonial office had not attracted, to a sufficient degree, the attention of the principal minister of the crown; for I see matter in them quite inconsistent with the arrangement made in 1845 by the Earl of Aberdeen and Edward Everett. At that time, the Earl of Derby, the present first minister, was colonial secretary. It could not well have taken place without his knowledge, and, in fact, without his concurrence and sanction. I cannot but think, therefore, that its being overlooked is an inadvertence.

"The treaty of 1818 was made with the crown of England. If a fishing vessel is captured by one of her vessels of war, and carried to a British port for adjudication, the crown of England is answerable; and then we know whom we have to deal with. But it is not to be expected that the United States will submit their rights to be adjudicated upon in the petty tribunals of the *provinces*; or that we shall allow our vessels to be seized on by constables, or other petty officers, and condemned by the municipal courts of Quebec and Newfoundland, New Brunswick or Canada. No, no, no! (Great cheering.)

"Further than this, gentlemen, I do not think it expedient to remark upon this topic at present. But you may be assured, it is a subject upon which no one sleeps at Washington. I regret that the state of my health caused my absence from Washington when the news came of this sudden change in the interpretation of the treaties."

The President answered the resolution of the Senate on the 5th of August, and, in transmitting the documents requested by that body, he observed that the steam-frigate Mississippi, Commodore M. C. Perry, had been despatched to the coasts of the British possessions "for the purpose of protecting the rights of American fishermen under the convention of 1818." These documents were speedily published. Many of them are of great value. Soon after their publication, debates upon the subject of the fisheries were renewed. Our limits allow us to notice the speech of Mr. Seward alone, delivered on the 14th of August.

He is supposed to have expressed the views of the government, or to have made authorized explanations, upon several important points which he discussed. To correct whatever misapprehension existed relative to the British naval force on the fishing grounds, he said:

"Let us now see what force it is that has been sent into the field of the dispute. There is the Buzzard, a steamer of six guns, and the Bermuda, a schooner of three guns, sent to the straits of Belleisle and on the coast of Newfoundland, where we have an unquestioned right of fishing, and where there is no controversy. Then there is the Devastation, a steamer of six guns; the Arrow and the Telegraph, of one gun each; and the Netley, of two guns, in the Gulf of St. Lawrence: making in the whole seven vessels, with a total of 31 guns, sent by the imperial government into these waters. If you add to this force the flag-ship of Vice Admiral Seymour, (the Cumberland,) with seventy guns, there are, altogether, one hundred and one guns. This is the naval force which has been sent into the northeastern seas.

"Now, I desire the Senate to take notice what force was there *before* this great naval force was sent. Last year there was the flag-ship, the Cumberland, commanded by the same Sir Charles Seymour, with seventy guns; a frigate of twenty-six guns; two sloops of sixteen guns; and one steamer of six guns: making in the whole sixty-four guns,

without the Cumberland; and, including the Cumberland, one hundred and thirty-four guns.

"Then this mighty naval demonstration which has so excited the Senate and roused its indignation, and brought down its censure upon the administration, consists in a reduction of the naval force which Great Britain had in these waters a year ago from one hundred and thirty-four to one hundred and one guns. What the British government has done has been to withdraw some large steamers, because they were not so useful in accomplishing the objects designed, or because they would be more useful elsewhere, and to substitute in their place a large number of inferior vessels—either more efficient there, or less useful elsewhere."

He added: "The Senate will understand me. I do not say that this is the whole force which is in those waters. There is an increase, I think, on the whole, which is furnished by small vessels of the different provinces—Canada having sent two or three, Nova Scotia three or four, and Prince Edward Island, I think, one. But the question I am upon, and the real question now is, what the imperial government has done; and so I say the British government has reduced the number of guns employed."\*

In reply to strictures upon the course of the Secretary of State, Mr. Seward remarked: "The President, it seems, took pains to obtain information informally, and he caused it to be published, in a notice issued by the Secretary of State, and dated at the Department of State July 6, 1852, and which has been called here the 'proclamation' of the Secretary.

\* The Halifax Chronicle, in July, published the following:

"For the information of all concerned, we subjoin a list of the cruisers our calculating neighbors are likely to fall in with on the coast—all of which will, we apprehend, do their duty, without fear or favor:

Cumberland *	74	.....	Captain Seymour.
Sappho	12	..... sloop	Com. Cochrane.
Devastation †	6	..... steam sloop	Com. Campbell.
Buzzard	6	..... steam sloop	Com. _____
Janus †	4	..... steam sloop	Lieutenant _____
Netley	3	..... ketch	Com. Kynaston.
Bermuda	3	..... schooner	Lieutenant Jolly.
Arrow		..... brigantine	_____
Telegraph		..... schooner	_____
Halifax	2	..... brigantine	Master Laybold.
Belle	2	..... brigantine	Master Crowell.
Responsible	2	..... schooner	Master Dodd.
Daring	2	..... schooner	Master Daly.

"In addition to this formidable force, his Excellency Sir G. F. Seymour requires, we learn, *two more* vessels, besides the Arrow and Telegraph, (two beautiful craft, of whose merits we have previously spoken,) to be fitted, provisioned, officered, and manned by the British government. The Buzzard, hourly expected from Portsmouth, brings out men to man these hired vessels. To these must be added *two* from New Brunswick, *one* from Canada, and *one* from Prince Edward Island, making a total of *nineteen* armed vessels, from the 'tall Admiral' to the tiny tender, engaged in this important service. His Excellency the Vice Admiral deserves the thanks of the people of British North America for the zeal with which he has taken up this momentous matter, and also for the promptitude of his co-operation with the provincial government. Janus comes to Newfoundland direct from Gibraltar, she is an experimental steamer, constructed by Sir Charles Napier, and by some said to be a splendid failure. Cumberland sails immediately for St. Johns and the Newfoundland coast."

\* Flag, Sir G. F. Seymour.

† 300 horse power.

‡ 220 horse power.



"The Senate will see that the Secretary of State set forth such unofficial information (and all the information was unofficial) as had been obtained, and stated the popular inference then prevalent, saying that the imperial government 'appeared' now to be willing to adopt the construction of the convention insisted on by the colonies. Inferring, from circumstances, the hazards and dangers which would arise, he set forth the case precisely as it seemed to stand. He adverted to the question understood as likely to be put in issue, and, admitting that technically the convention of 1818 would bear the rigorous construction insisted on by the colonies, he declared the *dissent* of the government of the United States from it; and then communicated the case to the persons engaged in this hard and hazardous trade, that they might be 'on their guard.'

"I am surprised that any doubts should be raised as to the proclamation being the act of the government. I do not understand how a senator or a citizen can officially know that the Secretary of State is at Marshfield, or elsewhere, when the seal and date of the department affirm that he is at the capital. I would like to know where or when this government or this administration has disavowed this proclamation.

"In issuing this notice, the Secretary of State did just what the Secretary of State had been in the habit of doing in such cases from the foundation of the government, viz: he issued a notice to the citizens of the United States to put them on their guard in a case of apparent danger, resulting from threatening embarrassment of our relations with a foreign power. The first notice of the kind which I have found in history is a notice issued by Thomas Jefferson, Secretary of State under George Washington, to the merchants of the United States, informing them of the British Orders in Council, and of the decrees of the French Directory, and of the apprehended seizure and confiscation of American vessels under them; and assuring the American merchants that, for whatever they might unlawfully lose, the government of the United States would take care that they would be indemnified. I brought that to the notice of the Senate heretofore, and upon the ground, among others, that they have twice sanctioned a bill providing for the payment of losses by French spoliations.

"The notice published by Mr. Webster was of the same character and effect. Since that time, the Mississippi, a steam war frigate of the United States, has been ordered to those waters to cruise there for the protection of American fishermen in the enjoyment of their *just* rights. Thus ends the whole story of these transactions about the fisheries. The difficulties on the fishing grounds have 'this extent—no more:' they are the wonder of a day, and no more."

Again: in explanation of the charge of a senator, that Mr. Webster had conceded too much in his official notice of July 6, he said: "Now, here is Mr. Webster's language. After quoting the treaty, he says:

"'It would appear that, by a *strict and rigid construction of this article*, fishing vessels of the United States are precluded from entering into the bays,' &c.

"And in the same connexion he adds:

"'It was undoubtedly an *oversight in the convention of 1818 to make so large a concession to England.*'

"That is to say, it was an oversight to use language in that convention which, by a strict and rigid construction, might be made to yield the freedom of the great bays.

"It is, then, a question of mere verbal criticism. The Secretary does not admit that the rigorous construction is the just and true one; and so he does not admit that there is any 'concession' in the sense of the term which the honorable senator adopts. Now, other honorable senators, if I recollect aright—and particularly that very accurate and exceedingly strong-minded senator, the gentleman from Massachusetts, (Mr. Davis)—conceded that the treaty *would bear* this rigorous construction; insisting, nevertheless, just as the Secretary of State did, that it was a forced and unjust one."

To refute the many rumors relative to an adjustment of the difficulties, as well as to repel the imputation of treating under duress, he declared that "no negotiation has been had between the President of the United States and the English government. No negotiation is now in progress between the two governments. No negotiation has been instituted between the two governments for any purpose whatever. No overture of negotiation has been made by the British government since the last year, and no overture has been made by the American to the British government. So, then, it appears that nothing has been negotiated away at the cannon's mouth, because there has been no negotiation at all, either at the cannon's mouth or elsewhere. There has not been any negotiation under duress, because there has been no pretence of a design by the imperial government to enforce its rigorous construction of the convention of 1818, or to depart from the position of neutrality, if I may so call it, always heretofore maintained."

On the subject of reciprocity, he considered that "the indications are abundant that it is the wish of the Senate that the Executive should not treat upon this subject, and I think wisely. I agree on that point with my honorable and distinguished friend from Massachusetts, (Mr. Davis.) What the colonies require is some modification of commercial regulations which may affect the revenue. That is a subject proper to be acted upon by Congress, not by the President, if it is to be acted upon at all. It must not be done by treaty. We seem to have courted the responsibility, and it rests upon us. Let us no longer excite ourselves and agitate the country with unavailing debates; but let us address ourselves to the relief of the fishermen, and to the improvement of our commerce.

"Now, sir, there is only one way that Congress can act, and that is by reciprocal legislation with the British Parliament or the British colonies of some sort. I commit myself to no particular scheme or project of reciprocal legislation, and certainly to none injurious to an agricultural or a manufacturing interest."

As to the course to be pursued, he said, in concluding his speech, "I, for one, will give my poor opinion upon this subject, and it is this: that so long hereafter as any force shall be maintained in those north-eastern waters, an equal naval force must be maintained there by ourselves. When Great Britain shall diminish or withdraw her armed force, we ought to diminish or withdraw our own; and in the mean time a commission ought to be raised, or some appropriate committee of this body—the Committee on Foreign Relations, the Committee on Finance, or the Committee on Commerce—should be



charged to ascertain whether there cannot be some measures adopted by reciprocal legislation to adjust these difficulties and enlarge the rights of our fishermen, consistently with all the existing interests of the United States."

It is understood that the Committee on Commerce, at the moment of the misunderstanding in July, had nearly matured a bill which embraced, substantially, the propositions submitted by Sir Henry Bulwer, in June, 1851. To assume that such is the fact, and that the bill would have passed Congress, but for the precipitancy of the parties to the Toronto agreement, recalls the significant remark of Mr. Davis, once already quoted, that the colonists were "playing a game which may not advance materially the interests they have in view."

Our record, thus far, contains a rapid notice of events connected with the controversy to the close of August, 1852. It comprises, as will be perceived, no account of any action on the part of the two governments to adjust the difficulties between them, either by negotiation or by legislation.

But there is good authority for saying that the British admiral (Seymour) was instructed by the admiralty, in the course of August, to allow our fishermen to pursue their avocation in the Bay of Fundy, on the terms of the arrangement of 1845; to allow us to fish at the Magdalene islands, as in former years; to forbear to capture our vessels when more than three miles from the shore, as measured *without* reference to the "headlines," and by the old construction of the convention; and generally to execute his orders with forbearance and moderation. That the British ministry have been disposed, from first to last, to adjust the controversy on honorable terms, can hardly be doubted. In 1852, as in 1845, the clamors, remonstrances, and, I will add, the misrepresentations of the colonists, changed their intentions. As at every former time, the politicians of Nova Scotia led off in opposition to a settlement. Early in September, a public meeting was called at Halifax, which, according to the published report of its proceedings, was attended by persons of all classes and interests, "to petition her Majesty in regard to the rumored surrender of the rights of fishery secured to British subjects by the convention of 1818." One gentleman of consideration and influence appears to have "protested against the utility of the meeting," but to have been "promptly checked by his worship the mayor," who presided. Several merchants were present, but performed a secondary part. The political leaders had everything their own way. One member of the "provincial parliament" nominated the chairman; another introduced a series of resolutions; while a third, who declared that "a strong expression of the opinion of the meeting should go to the foot of the throne," closed his remarks with submitting a memorial to her Majesty, which "*he* had prepared." A fourth honorable M. P. P. is understood to have said, that "if her Majesty's government give up the fisheries, they must be prepared to give up the colony also;" and the Hon. Joseph Howe, provincial secretary, is represented to have advocated, with his usual power, the adoption of the measures presented by his associate politicians. Comment upon these measures is not necessary. The tone of the resolutions, of the address to the governor of the colony, and of the memorial to the Queen, is offensive. These documents, from beginning to end, show a spirit of deep hostility to the United States, and a deter-

mination to be satisfied with no terms of accommodation which would be entertained by our government; and, like everything else in Nova Scotia on the subject of the fisheries, contain much that is erroneous in statement of matters of fact, and that is unsound in questions of *political science*.\*

\* These documents are as follows:

#### RESOLUTIONS.

1. *Resolved*, That the citizens of Halifax feel deeply grateful to her Majesty's government for the determination to "remove all ground of complaint on the part of the colonies in consequence of the encroachments of the fishing vessels of the United States upon the reserved fishing grounds of British America," expressed in the despatch of the right honorable the Secretary of State for the colonies, dated the 22d of May.

2. *Resolved*, That the citizens of Halifax have regarded with interest and satisfaction the judicious measures adopted by Vice Admiral Sir George Seymour, to carry out that determination with firmness and discretion.

3. *Resolved*, That securely relying upon the justice and maternal care of their Sovereign, the citizens of Halifax are reluctant to believe that, because a few threatening speeches have been made in Congress, and a single ship-of-war has visited their coasts, the Queen's government will relax their vigilant supervision over British interests, or weakly yield up rights secured by treaty stipulations.

4. *Resolved*, That history teaches that the commercial prosperity and naval power of every maritime state have risen, by slow degrees, from the prosecution of the fisheries, in which seamen were trained and hardy defenders nurtured.

5. *Resolved*, That reading this lesson aptly, the great commercial and political rivals of England—the United States and France—have, for many years, fostered their fisheries by liberal bounties, and freely spent their treasure that they might recruit their navy and extend their mercantile marine.

6. *Resolved*, That by the aid of these bounties France and the United States maintain, on the banks and coasts of North America, 30,000 seamen, respectively, which either power, in case hostilities impend, can call home to defend its national flag, and, if need were, launch against the power of this empire.

7. *Resolved*, That without the aid of bounties the fisheries of British America have been prosecuted, and her marine interests have expanded, until her shores are peopled with a hardy class of men, who consume, almost exclusively, the manufactures of England in peace, and who, in times of danger, would leap into the shrouds of their national ships to defend the flag they reverence.

8. *Resolved*, That the cession of the Aroostook territory, and the free navigation of the St. John, the right of registry in colonial ports, and the free admission of the productions of the United States into British America at revenue duties only, have been followed by no corresponding relaxation of the commercial system of the United States which would justify a further sacrifice of colonial interests.

9. *Resolved*, That while more than one half of the seacoast of the republic bounds slave States, whose laboring population cannot be trusted upon the sea, the coasts of British America include a frontage upon the ocean greater than the whole Atlantic seaboard of the United States. The richest fisheries in the world surround these coasts. Coal, which the Americans must bring with them, should they provoke hostilities, abounds at the most convenient points. Two millions of adventurous and industrious people already inhabit these provinces, and the citizens of Halifax would indeed deplore the deliberate sacrifice of their interests, by any weak concession to a power which ever seconds the efforts of astute diplomacy by appeals to the angry passions—the full force of which has been twice on British America within the memory of this generation, and, in a just cause, with the aid of the mother country, could be broken again.

#### ADDRESS.

To his Excellency Colonel SIR J. GASPARD LEMARCHANT, Knight, and Knight Commander of the Orders of St. Ferdinand and of Charles the Third of Spain, Lieutenant Governor and Commander-in-chief in and over her Majesty's province of Nova Scotia and its dependencies, Chancellor of the same, &c.

MAY IT PLEASE YOUR EXCELLENCY: We, her Majesty's dutiful and loyal subjects, the mayor and aldermen of the city, and representatives of the city and county of Halifax, respectfully request that your excellency will be pleased to transmit, by this night's mail, to the right honorable the Secretary of State for the Colonies, to be laid at



There is now but little to add to complete a record of the more important events connected with the history of this controversy.

The Queen of England, in her speech at the opening of Parliament, November, 1852, remarked that "the present and well-grounded complaints on the part of my North American colonies, of the infraction

the foot of the throne, a dutiful and loyal petition, unanimously adopted this day by a very large and influential meeting of our fellow-citizens, held in the Province Hall.

We also pray that the resolutions, a copy of which is annexed, and which were passed with equal unanimity, may be also forwarded to the right honorable the Colonial Secretary.

This petition, and these resolutions, have been adopted in consequence of the alarming intelligence having been received that negotiations are pending between the British government and the American minister in London, for surrendering to the citizens of the United States the right of fishing on the coasts and within the bays of the British North American colonies, from which they are now excluded by the convention of 1818. We entreat your excellency, as the Queen's representative in this province, to convey to her Majesty's government a strong remonstrance against any such concession of the fishing rights as appears to be contemplated.

The immediate departure of this mail will not permit our detailing all the disastrous results to be apprehended from the concessions now required by the American government, but we must beg that you will assure her Majesty's ministers that the information just received has occasioned the most intense anxiety throughout the community, it being evident that our rights, once conceded, can never be regained.

By the terms of the convention of 1818 the United States expressly renounced any right of fishing within three marine miles from the coasts and shores of these colonies, or of entering their bays, creeks, and harbors, except for shelter, or for wood and water.

If this restriction be removed, it must be obvious to your excellency that it will be impossible to prevent the Americans from using our fishing grounds as freely as our own fishermen. They will be permitted to enter our bays and harbors, where, at all times, *unless armed vessels are present in every harbor*, they will not only fish in common with our own fishermen, but they will bring with them contraband goods to exchange with the inhabitants for fish, to the great injury of colonial traders and loss to the public revenue. The fish obtained by this illicit traffic will then be taken to the United States, where they will be entered as the produce of the American fisheries, while those exported from the colonies in a legal manner are subject to oppressive duties.

We need not remind your excellency that the equivalent said to have been proposed—that of allowing our vessels to fish in the waters of the United States—is utterly valueless, and unworthy of a moment's consideration.

We would fain hope that the reports which have appeared in the public press respecting the pending negotiations between the two governments are without any good foundation.

We cannot imagine that her Majesty's government, after having taken prompt and decided measures to enforce the true construction of the treaty, will ever consent to such modification of its terms as will render our highly valued rights a mere privilege to be enjoyed in common with foreigners.

We therefore pray your excellency to exert all your influence to induce her Majesty's ministers to stay any further negotiations on this vitally important question until the rights and interests of the inhabitants of this province are more fully inquired into and vindicated.

HALIFAX, September 2, 1852.

#### MEMORIAL.

*To the Queen's Most Excellent Majesty.*

The humble memorial of the undersigned, merchants and inhabitants of Halifax and other parts of Nova Scotia, convened at a public meeting held at Halifax on Thursday, the 2d of September, 1852, sheweth:

By the mail recently arrived from England, your memorialists have learned with deep concern that it is in contemplation of your Majesty's ministers to surrender to the United States of America privileges of fishing on the coasts of your Majesty's North American colonies, to which, at present, your Majesty's subjects are alone entitled.

Time is not afforded to enter at large on this subject, nor is it necessary. Repeatedly have the vital importance of these fisheries, and the necessity of preserving unimpaired the restrictions against encroachment by which they are guarded, been urged

by the citizens of the United States of the fishery convention of 1818, induced me to despatch, for the protection of their interests, a class of vessels better adapted to the service than those which had been previously employed. This step has led to discussion with the government of the United States; and while the rights of my subjects have been firmly maintained, the friendly spirit in which the question has been treated induces me to hope that the ultimate result may be a mutually beneficial extension and improvement of our commercial intercourse with the great republic."

The President of the United States, in his message to Congress, in the following month, refers to the subject with less brevity. He said: "In the course of the last summer, considerable anxiety was caused, for a short time, by an official intimation from the government of Great Britain that orders had been given for the protection of the fisheries upon the coasts of the British provinces in North America against the alleged encroachments of the fishing vessels of the United States and France. The shortness of this notice and the season of the year, seemed to make it a matter of urgent importance. It was at first apprehended that an increased naval force had been

on the imperial government. It was believed the time had long passed when a question could be raised on either of these points. To stimulate imperial aid in protecting and maintaining acknowledged rights was all, it was imagined, that was required of the colonies, and they fondly trusted this consummation had been attained, when, in the present season, your Majesty's war steamers came commissioned on this service.

Little, may it please your Majesty, was it anticipated these were to be the precursors of a transfer alike injurious and humiliating to your loyal colonial subjects, or for this aid that so large a price would be demanded.

May it please your Majesty, when the United States, by the treaty of 1818, solemnly renounced forever the right to fish within three marine miles of the coasts, bays, creeks, or harbors of certain portions of your North American territory, the stipulation was neither extraordinary nor extravagant. It is matter of common history, that sea-girt nations claim peculiar rights within a league of their shores; and equally plain that, according to the maxims of international law, this claim is defined by lines drawn not only between the formations of bays, but from the headlands of indentations of the coast.

But had it been otherwise, the stipulation was part of a general treaty, in which concession on one side may be presumed to have been compensated by concession on the other, and loss in one particular by gain in another; and the engagement was made in language too explicit, and in terms too well understood, to admit the possibility of misapprehension.

Shall nations, may it please your Majesty, be absolved from the obligation of their contracts, and complaints be respected when made by a people, which, between individuals, would be treated as puerile?

If conciliation, irrespective of right, be the principle on which is to be withdrawn the restriction against the entry of Americans into the bays and indentations of the coast to fish, limiting them alone to the distance of three miles from the shore, the concession of the privilege to fish within this latter distance must equally be granted—as, indeed, has been already urged in the American Congress: the restriction in both cases rests on the same authority; and the concession in each would be demanded by the same principle. It may not be the province of your Majesty's colonial subjects to suggest how far such a principle is consistent with national honor and independence: they have a right to pray that it be not carried out at their expense.

When the welfare of the empire is supposed to demand extensive alterations in the laws of trade and navigation, the peculiar interests of the colonies are not permitted to disturb the general system by the continuance of conflicting regulations, however necessary, from long usage and the competition of foreigners more powerful and more fostered by their own government.

In the present case, the possession to surrender is no offspring of artificial arrangements, falling with a complicated policy of which it formed a part.

No, may it please your Majesty, your loyal subjects in Nova Scotia raise their voice against the injury of an inheritance conferred upon your North American subjects by



ordered to the fishing grounds to carry into effect the British interpretation of those provisions in the convention of 1818 in reference to the true intent of which the two governments differ. It was soon discovered that such was not the design of Great Britain; and satisfactory explanations of the real objects of the measure have been given, both here and in London.

The unadjusted difference, however, between the two governments, as to the interpretation of the first article of the convention of 1818, is still a matter of importance. American fishing vessels, within nine or ten years, have been excluded from waters to which they had free access for twenty-five years after the negotiation of the treaty. In 1845, this exclusion was relaxed so far as concerns the Bay of Fundy, but the just and liberal intention of the home government, in compliance with what we think the true construction of the convention, to open all the other outer bays to our fishermen, was abandoned, in consequence of the opposition of the colonies. Notwithstanding this, the United States have, since the Bay of Fundy was reopened to our fishermen in 1845, pursued the most liberal course towards the colonial fishing interests. By the revenue law of 1846, the duties on colonial fish entering our ports were very greatly reduced, and, by the warehousing act, it is allowed to be entered in bond without payment of duty. In this way, colonial fish has acquired the monopoly of the export trade in our market, and is entering, to some extent, into the home consumption. These facts were among those which increased the sensibility of our fishing interest at the movement in question.

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nature, connected with their soil by the laws and usages of nature, confirmed to them by solemn compact, and which, practically enjoyed by them peculiarly, and as your other Majesty's subjects cannot enjoy them, can be surrendered only at their extreme injury and great loss.

Surely, may it please your Majesty, your loyal colonial subjects have a right to ask for some better reason for this sacrifice of their peculiar right and interest than the demand of a foreign power—the aggrandizement of a foreign people.

It is reported that the American government, with characteristic diplomatic skill, have offered to concede a similar privilege on their own coast in return for what they seek on the coasts of British North America.

The proffered boon is valueless to the colonists—they want it not, and would derive no benefit from it. The offer may deceive the uninformed, or it may afford an excuse to palliate the sacrifice of your colonial subjects' rights. It may have been made by our sagacious neighbors with this object; but to those who will suffer by the pretext, it is but the addition of insult to wrong. If rights so entirely colonial and so clear as this are to be sacrificed to American influence, the colonists should know it. Let them not, may it please your Majesty, be treated as children or imbeciles by nominally granting them a privilege which they know, and the Americans know, to be worthless as an equivalent for one which both equally know to be of incalculable value; for let it not be urged upon your Majesty that what the Americans seek is of no value. Their earnestness is certain evidence to the contrary.

It is, may it please your Majesty, of value, of great value, in itself; of perhaps greater value still, as the best, the only safeguard against violation of the restriction which prohibits the approach of the American fishermen within three miles of the shore.

Your memorialists deprecate all negotiation—all compromise on the subject. The Americans will not, probably they cannot, grant an equivalent for the privileges they seek, and the only security for the colonies is the entire abandonment of the present negotiations.

Your memorialists most earnestly entreat your Majesty that the existing fishery restrictions will be preserved in their letter, and that your Majesty's power may be put forth to prevent their violation.

And your petitioners, as in duty bound, will ever pray, &c.

"These circumstances, and the incidents above alluded to, have led me to think the moment favorable for a reconsideration of the entire subject of the fisheries on the coasts of the British provinces, with a view to place them upon a more liberal footing of reciprocal privilege. A willingness to meet us in some arrangement of this kind is understood to exist on the part of Great Britain, with a desire on her part to include in one comprehensive settlement as well this subject as the commercial intercourse between the United States and the British provinces. I have thought that, whatever arrangements may be made on these two subjects, it is expedient that they should be embraced in separate conventions. The illness and death of the late Secretary of State prevented the commencement of the contemplated negotiations. Pains have been taken to collect the information required for the details of such an arrangement. The subject is attended with considerable difficulty. If it is found practicable to come to an agreement mutually acceptable to the two parties, conventions may be concluded in the course of the present winter. The control of Congress over all the provisions of such an arrangement, affecting the revenue, will of course be reserved."

Our latest accounts from two of the British colonies show that opposition is still manifested to an adjustment of the dispute on terms which would be satisfactory to the United States.

The resolutions which follow, and which were adopted at a public meeting at St. John, New Brunswick, December, 1852, indicate, probably, the temper of the commercial class of that city:

*"Resolved*, That this meeting consider the coast fisheries of the North American colonies the natural right and property of the inhabitants thereof, and that they should not be alienated, conceded, nor affected without their consent, in any negotiation with the United States government, or any other foreign power, without their consent, inasmuch as the value of the fisheries to the British provinces, with an increased and increasing population, cannot be estimated aright at the present time.

*"Resolved*, That this meeting view with deep anxiety and concern the announcement in her Majesty's speech to the imperial Parliament, that negotiations are now pending between her Majesty's government and that of the United States, relative to the fisheries of the North American provinces, and also the recommendation of the President of the United States, in his official message to Congress, to negotiate a treaty for a participation by the citizens of the United States in the said fisheries, irrespective of any question of reciprocal intercourse between the United States and the North American colonies.

*"Resolved*, That a committee be now appointed to prepare an humble address, praying that her Majesty will be graciously pleased to refuse to entertain any proposition from the United States government for any modification or alteration of the treaty of 1818, unless such a proposition embraces the full and entire question of reciprocal intercourse in commerce and navigation upon terms that will be just and reasonable, inasmuch as the value of a participation in our fisheries by the citizens of the United States would greatly exceed any concessions that the United States government can offer to the inhabitants of the British colonies, and that, before any treaty affecting the fisheries is agreed upon, her Majesty will be graciously pleased to afford her Majesty's loyal and faithful subjects, in the provinces, an opportunity of



becoming acquainted with the terms proposed in said treaty, and of laying their case at the foot of the throne."

The lieutenant governor of Nova Scotia, in his speech to the Assembly of that colony, January, 1853, observes:

"I shall direct to be laid before you certain papers, connected with the important subject of an efficient protection of the fisheries, including correspondence between the executive and his excellency the naval commander-in-chief on this station, with respect to the best mode in which this service should be carried out. To the zeal and experience of that distinguished officer, and to the active and cordial co-operation of the officers of the squadron employed under his command, we are much indebted for the vigilance with which our national rights have been guarded, without, at the same time, any diminution of the friendly relations which ought to subsist between those whose common origin and mutual interests offer so many pledges for the preservation of peace.

"You will be pleased to learn that the government of the United States has at length consented to negotiate on the subject of their commercial relations with the British empire. I shall rejoice if these negotiations result in the opening of more extended markets for the productions of British America, and the adjustment of questions on which the legislatures of all the provinces have hitherto evinced a lively interest."

The Assembly, in their reply to his excellency, deprecate "any concession of territorial advantages to the citizens of the United States, without these are purchased by the most full and ample equivalents."

#### EXAMINATION OF THE BRITISH PRETENSIONS, AND OF THE DOCUMENTS WHICH SUPPORT THEM.

Having now completed a rapid historical view of the controversy between the two governments as to the intent and meaning of the first article of the convention of 1818, I propose to examine the principal papers which are relied on to maintain the British side of the case.

In answer to Lord Falkland's first query, the crown lawyers say: "Inobedience to your lordship's commands, we have taken these papers into consideration, and have the honor to report, that we are of opinion that the treaty of 1783 was annulled by the war of 1812; and we are also of opinion that the rights of fishery of the citizens of the United States must now be considered as defined and regulated by the convention of 1818; and with respect to the general question, *'if so, what right?'* we can only refer to the terms of the convention, as explained and elucidated by the observations which will occur in answering the other specific queries."

And so, as the words stand, the treaty of 1783 having been "annulled" by the event spoken of, our independence as a nation was revoked also. This is something the American people had not thought of. These gentlemen mean, possibly, that our rights of fishing only were abrogated by the rupture in 1812, and we may consider their opinion on this ground.

Fortunately, the late President John Quincy Adams has pronounced a judgment upon this very point. On the convention of 1818 he remarked: "The United States have renounced forever that part of the fishing liberties which they had enjoyed, or claimed, in certain parts of

the exclusive jurisdiction of British provinces, and within *three marine miles* of the shores. The first article of this convention affords a signal testimonial of the correctness of the principle assumed by the American plenipotentiaries at Ghent; for as by accepting the express renunciation by the United States of a small portion of the privilege in question, and by confirming and enlarging all the remainder of the privilege forever, the British government have implicitly acknowledged that the liberties of the third article of the treaty of 1783 have not been abrogated by the war."

It is true, as a general rule, that the obligations of treaties are dissolved by hostilities. But, says Chancellor Kent, "*where treaties contemplate a permanent arrangement of national rights, or which, by their terms, are meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by the event of war. They revive at peace, unless waived, or new and repugnant stipulations be made.*" The treaty of 1783 is precisely within this rule. It "contemplated a permanent arrangement of national rights." It "revived at the peace;" for our commissioners at Ghent, instead of "waiving" the former stipulations, or admitting "new and repugnant" ones, declined any discussions whatever on the subject. In their communication to the Secretary of State, of December 25, 1814, they say:

"Our instructions had forbidden us to suffer our right to the fisheries to be brought in discussion, and had not authorized us to make any distinction in the several provisions of the third article of the treaty of 1783, or between that article and any other of the same treaty.

"We had no equivalent to offer for a new recognition of our right to any part of the fisheries, and we had no power to grant any equivalent which might be asked for it by the British government. We contended that the whole treaty of 1783 must be considered as one entire permanent compact, not liable, like ordinary treaties, to be abrogated by a subsequent war between the parties to it; as an instrument recognising the rights and liberties enjoyed by the people of the United States as an independent nation, and containing the terms and conditions on which the two parties of one empire had mutually agreed henceforth to constitute two distinct and separate nations. In consenting, by that treaty, that a part of the North American continent should remain subject to the British jurisdiction, the people of the United States had reserved to themselves the liberty, which they had ever before enjoyed, of fishing upon that part of the coast, and of drying and curing fish upon the shores; and this reservation had been agreed to by the other contracting party.

"We saw not why this liberty—then no new grant, but a mere recognition of a prior right always enjoyed—should be forfeited by a war more than any other of the rights of our national independence; or why we should need a new stipulation for its enjoyment more than we needed a new article to declare that the King of Great Britain treated with us as free, sovereign, and independent States. We stated this principle in general terms to the British plenipotentiaries in the note which we sent to them with our *projet* of the treaty, and we alleged it as the ground upon which no new stipulation was deemed by our government necessary to secure to the people of the United States all the rights and liberties stipulated in their favor by the treaty of 1783. No



reply to that part of our note was given by the British plenipotentiaries." \*

To Lord Falkland's second and third queries the Queen's advocate and her Majesty's attorney general reply:

"Except within certain defined limits, to which the query put to us does not apply, we are of opinion that, by the terms of the treaty, American citizens are excluded from the right of fishing within three miles of the coast of British America; and that the prescribed distance of three miles is to be measured from the headlands or extreme points of land next the sea of the coast, or of the entrance of the bays, and not from the interior of such bays or inlets of the coast; and, consequently, that no right exists, on the part of American citizens, to enter the bays of Nova Scotia, there to take fish, although the fishing being within the bay, may be at a greater distance than three miles from the shore of the bay, as we are of opinion that the term headland is used in the treaty to express the part of the land we have before mentioned, excluding the interior of the bays and the inlets of the coast."

It is somewhat remarkable that the term "headland" *does not once occur in the convention*. Of course, so important a mistake as this leaves these *learned* gentlemen in an unfortunate position. The single word "headland," on which they found their argument, is not once "used," I repeat, in the instrument which they are required to interpret. I affirm, further, that the idea of excluding our vessels from the "bays of Nova Scotia" was not entertained, nor so much as mentioned, during the negotiations which preceded the convention. The consultations between Mr. Adams and Lord Bathurst commenced on

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\* It has been suggested to me by gentlemen of high consideration in our national councils, that Mr. Adams, by consenting to the convention of 1818, abandoned the principle which is here so ably asserted. If it can be shown that he really did consent to that convention, the suggestion is not without force, since it is manifest, that on the ground taken by our commissioners at Ghent, no new stipulations were necessary. But I have never believed that Mr. Adams, as Secretary of State, approved of the terms of the convention; and my conjecture has been, that he persisted in the views which he entertained in 1814, and was overruled by other members of Mr. Monroe's cabinet. Desirous, if possible, to ascertain the precise fact upon so important a point, I addressed a note of inquiry to the Hon. Charles Francis Adams, his only surviving son and executor. This gentleman consulted his father's diary, and kindly furnished me with the following minutes of a conversation with the British minister at Washington, (Mr. Bagot,) on the 15th of May, 1818. This extract will remove all doubt, as it seems to me, as to the consistency of Mr. Adams, and shows that he *submitted*, rather than consented, to a negotiation which he had not the power to prevent, as well as to terms which he disliked, and which had been partially or entirely determined upon by our government before his return from England, or before he became a member of the cabinet.

"As to the proposal which was to have been made to the British government," he recorded, "and which had hitherto been delayed, its postponement had been owing to difficulties which had been discovered since it was promised. It was founded on the principle of assuming a range of coast within given latitudes for our fishermen to frequent, and abandoning the right to fish for the rest. But the fish, themselves, resorted at different times to different parts of the coast, and a place which might be selected as very eligible now, might be in the course of four or five years entirely deserted. For my own part, I had always been averse to any proposal of accommodation. I thought our whole right, as stipulated by the treaty of 1783, so clear, that I was for maintaining the whole; and if force should be applied to prevent our fishermen from frequenting the coast, I would have protested against it, and reserved the right of recovering the whole by force, whenever we should be able. IT HAD, HOWEVER, BEEN DETERMINED OTHERWISE HERE, AND A PROPOSAL HAD BEEN PROMISED. Perhaps we should ultimately offer to give up the right of drying and curing on the shore, and reserve the whole right of fishing."

the basis of requiring of us the renunciation of the *shore* or *boat* fisheries, and of no others. At the first interview his lordship used this distinct and emphatic language:

"As, on the one hand, Great Britain could not permit the vessels of the United States to fish within the creeks and *close upon the shores* of the British territories, so, on the other hand, it was by no means her intention to interrupt them in fishing *anywhere in the open sea*, or without the territorial jurisdiction, *a marine league from the shore*." Again, and on a subsequent occasion, he said, it is not "of fair competition that his Majesty's government has reason to complain, but of the preoccupation of British *harbors* and creeks." The conferences, the correspondence, proceeded and terminated on this supposition—that we relinquish the *inner grounds*, as they are called, and retained the *outer*, or *vessel* fisheries. We were no longer to interfere with the colonists in the "*harbors and creeks*;" but, beyond the common three-mile maritime jurisdiction, were to retain every right to *catch* fish that we had previously enjoyed. Did space allow, I could show from both sides of the correspondence that this original thought of Lord Bathurst was kept continually in view, and that the *bays* mentioned by the crown lawyers were not even once referred to. Is it, then, to be believed for a single moment—recalling, as we fairly may do, the course pursued by Mr. Adams and Mr. Gallatin at Ghent, in 1814, and the remarks of Lord Bathurst the following year—that, after three years of negotiation, a treaty should have been formed which took from us very much more than the British government required us to surrender at the outset? The thing seems utterly impossible.\*

Our statesmen *have* been accused, on the other side of the Atlantic, of a limited knowledge of international law, but never of sacrificing our interests: in truth, the standing charge against them is, that they overreach, and drive too hard bargains. But, on the supposition that the right of fishing has been abandoned in the bays of British America, those who negotiated, and those who confirmed, the convention of 1818, allowed themselves to be most scandalously duped, and never subsequently discovered the fraud.

Contemporaneous exposition is always authoritative to some extent; and in this case, I consider it is as decisive as are the essays of Hamilton, Madison, and Jay, in interpreting the constitution.

The crown lawyers, who had no part in concluding the treaty before us, cannot be allowed to interpret it for our government, when we have the declarations of the minister who opened the conferences, and the ministers who signed the treaty itself. From this position we are not to be driven. What, then, is the testimony of Messrs. Gallatin and Rush? On the very day on which they affixed their signatures to the convention, (October 20, 1818,) they wrote to the Secretary of State, (who was no other than John Quincy Adams) that "We succeeded in securing, besides the rights of taking and

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\* The extract from John Quincy Adams's diary which I have inserted as a note, in considering the crown lawyers' reply to Lord Falkland's first query, shows, conclusively, that as late as May 15, 1818, and after the negotiations of more than two years, our government had not even proposed to *surrender any portion of the fishing-grounds* which we occupied under the treaty of 1783. Mr. Adams records, at the date mentioned: "*Perhaps we should ultimately offer to give up the right of drying and curing on the shore, and reserve the whole right of fishing.*"



curing fish within the limits designated by our instructions, as a *sine qua non*, the liberty of fishing on the coasts of the Magdalen islands, and of the western coast of Newfoundland, and the privilege of entering for shelter, wood, and water, in all the British harbors of North America. Both were suggested as important to our fisheries, in the communications on that subject, which were transmitted to us with our instructions. To the exception of the exclusive rights of the Hudson's Bay Company, we did not object, as it was virtually implied in the treaty of 1783, and we had never, any more than the British subjects, enjoyed any right there; the charter of that company having been granted in the year 1670. The exception applies only to the coasts and harbors, and does not affect the right of fishing in Hudson's bay beyond three miles from the shores—a right which could not exclusively belong to, or be granted by, any nation.

"It will also be perceived that we insist on the clause by which the United States renounce their right to the fisheries, relinquished by the convention, that clause having been omitted in the first British counter *projet*. We insisted on it with the view—1st. Of preventing an implication that the fisheries secured to us were a new grant, and of placing the permanence of the rights secured, and of those renounced, precisely on the same footing. 2d. *Of its being expressly stated, that our renunciation extended only to the distance of three miles from the coast. This last point was the more important, as, with the exception of the fisheries in open boats within certain harbors, it appeared from the communications above mentioned that the fishing ground on the whole coast of Nova Scotia is more than three miles from the shore; whilst, on the contrary, it is almost universally close to the shore on the coasts of Labrador. It is in that point of view that the privilege of entering the ports for shelter is useful, and it is hoped that, with that provision, a considerable portion of the actual fisheries on that coast (of Nova Scotia) will, notwithstanding the renunciation, be preserved.*"

But if, as the crown lawyers contend, we cannot fish in a single bay of Nova Scotia, what did the American ministers mean, in the statements which I have marked? Did they attempt to deceive *an Adams*, on questions connected with the fisheries; or were they ignorant of their duty? Neither; for Mr. Adams himself emphatically and positively affirms their construction of the convention. Under circumstances\* highly interesting to his fame with this generation and with posterity, he declared that this convention "*secures essentially and substantially all the rights acquired by the treaty of 1783; it secures the whole coast fishery of every part of the British dominion, excepting within three marine miles of the shores.*" What answer can be made to this?

Still again: If the crown lawyers are in the right, how does it happen that we were in the uninterrupted possession of the very bays in dispute for a quarter of a century? The fact is not doubted; indeed, the attempt to dispossess us is the cause of the controversy. Mr. Everett afforded Lord Aberdeen an opportunity—nay, invited him—to explain this circumstance; but his lordship declined to reply. During these twenty-five years, ships of the royal navy annually appeared on the fishing grounds under special orders to prevent aggressions; yet not one of them, prior to the capture of

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\* Controversy with Jonathan Russell.

the Washington in 1843, ever seized an American vessel for merely fishing within these bays!

It may be answered, however, that we were occupants without title and by permission. But, says Blackstone, possession of lands, "by length of time and negligence of him who hath the right, by degrees ripens into a perfect and indefeasible title." As upon the land, so upon the sea. A nation, says Vattel, "if it has once acknowledged the common right of other nations to come and fish there, can no longer exclude them from it. It has left that fishery in its primitive freedom, at least in respect to those who have been in possession of it."<sup>†</sup>

If these remarks and authorities are pertinent, what term is necessary to give us a right to the common use of the bays of British America by uninterrupted occupancy and possession? Lord Stanley, in a despatch to Lord Falkland, as we have seen, considered that we had "practically acquiesced" in the opinion of the crown lawyers, because we did not protest against it in less than two years; and it might seem that the "practical acquiescence" of the British government for a period of twenty-five years previously was sufficient to place us within the rule of the writers above quoted. Especially since, after all, the true question in discussion is simply whether we shall *continue* in the common use of waters to which we have never ceased to resort from the peace of 1783; to which our fathers resorted as British subjects before the dismemberment of the empire; and to which we, as their descendants, have a claim for services rendered to the British crown in the original conquest from France.

If asked how the term "bays" is to be disposed of in the treaty, I answer that it applies to such arms of the sea as on some coasts are called *coves* and *creeks*, and was meant to designate all sheets of water which are not six miles wide, and no others. That our ministers acted upon information obtained from persons engaged in the fisheries is certain, for the negotiation was suspended to obtain it; and we may reasonably conclude that their informants spoke of these *coves* or *creeks* by the popular name of *bays*. Any person with a mariner's chart in his hand can observe that on the colonial coasts there is a multitude of "bays," some of which are more, and many less, than six miles wide at their mouths, or outer headlands. In fact, I know of no coast where they are so numerous. To mention all, would occupy more room than can be spared in this report. Mace's, St. Mary's, Barrington, Liverpool, Malaguash, Mahone, Margaret's, Blind, Tenant's, Pennant's, Chisselcook, Musquidoboit, Newton Quoddy, Shoal, Tom Lee's, Nicomquirque, Nicomtan, and Dover, are a part (though the most considerable) between the St. Croix and Cape Canso alone. That it may be fully understood in what sense the word "bay" is used in speaking of indentations of the coast at the

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<sup>†</sup> Dr. Paley, in his *Moral and Political Philosophy*, states the principle far more broadly. In chapter eleven, which is devoted to the "general rights of mankind," he says:

"If there be fisheries which are inexhaustible—as, for aught I know, the cod-fishery upon the Banks of Newfoundland and the herring fishery in the British seas are—then all those conventions by which one or two nations claim to themselves, and guaranty to each other, the exclusive enjoyment of these fisheries, are so many encroachments upon the general rights of mankind."—Boston edition, 1821, p. 84.



east, I give an example in the case of the Passamaquoddy, which in itself is only a branch-bay of Fundy. In this small branch-bay, then, in common language, are Cipp's, South, East, Rumsey's, Cobscook, Strait, Friar's, Casco, and West Quoddy; and the Passamaquoddy, after being thus minutely divided, takes the name of St. Andrew's bay, northerly and westerly of Eastport. The term "bays" is therefore a word of sufficient significance in the treaty, without embracing bodies of water which are as large as many European seas, and which are to be held in America as seas. I claim that our vessels can enter them of right, and fish in them, and can enter and fish in their branches, where the shore on either hand is more than three miles distant. We renounced the right to fish in the bodies of seawater which are less than six miles wide at their entrance or mouths, and in no others. That this is the true meaning of the convention is apparent from the proviso of the renunciatory clause, which allows our fishermen to enter "*such* bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood, and of obtaining water," &c. Now, as every practical man knows that neither of these purposes is or can be accomplished in large open bays, it is certain that while we renounced the right to fish in the small bays, we retained the right to enter them in cases of distress and emergency. The bays relinquished are of a description which allow of anchorage and shelter in stormy weather; that actually afford safety during the days and weeks which disabled vessels may occupy in repairs; that have accessible forests, and springs or streams of fresh water. The idea embraced is, that our vessels, in the cases specified, may run into any and every indent of the coast; for the term "purchasing wood" supposes a colonial owner, with a habitation on the shore, of whom fuel can be bought and paid for; and thus includes places which are inhabited. Persons who are acquainted with the bold and rocky shores of the large bays of British America—those of Chaleurs and Fundy, for example—with the dense fogs which prevail there, with the frequent and terrific gales, and with the fearful whirls and great rise and fall of the tide, understand full well what was intended to be reserved in the treaty, and the importance of the reservations. But such persons never heard, and, I will venture to say, never will hear, of fishing vessels, or of any class of vessels, effecting either of the purposes mentioned in the proviso, while sailing broad in the great seas which, in common language, are called *bays*. Yet these seas, in the opinion of the crown lawyers, are only open to our vessels in cases of distress, and when not one object for which they say we may lawfully enter them can, in fact, be executed. An attempt to show that the Queen's advocate, and her Majesty's attorney general, do not thus absurdly interpret the convention, involves the admission that our vessels, once across the line drawn three miles outside of the headlands, may seek the small branch-bays within these seas; and so demonstrates the accuracy of the construction which I have given; for then it follows that the right to fish in the branch-bays only is renounced, inasmuch as "*such* bays," after all, are *the* bays which afford the shelter, the accommodation for repairs, and the wood and water, contemplated by the convention.

"It is an established rule in the exposition of statutes," says Chancellor Kent, "that the intention of the lawgiver is to be deduced from a view of the whole and of every part of a statute, taken and com-

pared together. The real intention, when accurately ascertained, will always prevail over the literal sense of the terms." And he says further, that "When the words are not explicit, the intention is to be collected from the occasion and necessity of the law, from the mischief felt, and the remedy in view; and the intention is to be taken or presumed, according to what is consonant to reason and good discretion." If such is the fact with regard to municipal law, how much more important is the principal in the interpretation of treaties, which affect the harmony and peace of nations? I submit, then, that we have the "intention" of Messrs. Rush and Gallatin, in their renunciation of the right to fish in certain bays; that the pretension of England, that the war of 1812 had abrogated our entire rights, as provided in the treaty of 1783, was the "occasion and necessity" for new stipulations on the subject; that the opening conference between Lord Bathurst and Mr. Adams, in 1815, shows, beyond all doubt, that fishing, by our countrymen, within the creeks and close upon the shores of the British territories, was the "mischief felt;" and that the exclusion of American vessels from the common three-mile jurisdiction was "the remedy in view," in the renunciatory clause of the convention. Nor can it be urged that the relinquishment on our part of the *boat* or *shore* fisheries was too inconsiderable an object to be so strongly insisted on by the British government. I understand the value of these fisheries far too well to allow any force to such a suggestion. The colonists, secure in these, have vast treasures at their very doors. Oftentimes they have but to cast, tend, and draw seines and nets, to take hundreds of barrels of mackerel and herring in a single day; and years have occurred when no less than forty thousand barrels of the former fish have been caught in a season, on a portion of the coast only twelve miles long. As regards the *shore* fishery, for the kinds usually dried, that in the region of Barrington is of itself a mine of wealth. Colonial fishermen, here and elsewhere along the coast, may be at home after every day's toil, and look out upon their American competitors in the offing, rejoicing in advantages of pursuing their avocation in open boats, and the consequent advantages of social life, and of fishing and of attending to their little farms between "slacks of the tide," in "blowy weather," and when the fish "strike off."

The Queen's advocate and her Majesty's attorney general answer Lord Falkland's fourth query as follows:

"By the treaty of 1818 it is agreed that American citizens should have the liberty of fishing in the Gulf of St. Lawrence, within certain defined limits, in common with British subjects; and such treaty does not contain any words negating the right to navigate the passage of the Gut of Canso, and therefore it may be conceded that such right of navigation is not taken away by that convention; but we have now attentively considered the course of navigation to the gulf, by Cape Breton, and likewise the capacity and situation of the passage of Canso, and of the British dominions on either side, and we are of opinion that, independently of treaty, no foreign country has the right to use or navigate the passage of Canso; and attending to the terms of the convention relating to the liberty of fishery to be enjoyed by the Americans, we are also of opinion that that convention did not, either expressly or by implication, concede any such right of using or navigating the passage in question. We are also of opinion that casting bait to lure fish in the track of any American vessels navigating the passage,



would constitute a fishing within the negative terms of the convention."

This reply and the report\* of the committee of the House of Assembly of Nova Scotia will be considered together. The committee laud the late Chancellor Kent, cite from his Commentaries, and aver that he "agrees with the principles put forth by the law officers of the crown, and which justify the conclusion that no foreign power, independent of treaty, has any right to navigate the passage of Canso." It is not so. The passage† which they quote from Kent relates to "an immunity from belligerent warfare;" to ships of an enemy "hovering on our coasts;" to the degree of "uneasiness and sensibility" we might feel, "in the case of war between other maritime powers," were they to "use the waters of our coast" for the purpose of cruising and of capturing vessels. He gives no exact rule even in this respect. He gives no exact rule in time of peace. He says that "*the claim of dominion to close or narrow seas is still the theme of discussion and controversy.*" He then states the doctrine of several writers on international law, and remarks that "all that can reasonably be asserted is, that the dominion of the sovereign of the shore over the contiguous sea extends as far as is requisite for his safety and for some lawful end. A more extended dominion must rest entirely upon force and maritime supremacy." Now, it may be asked whether the "safety" of Nova Scotia demands the closing of Canso; and whether the refusal of its use is for "some lawful end." I am defending the rights of men in peace. I am asking for a free sea when our fishermen are bound to and from the distant scenes of their toil. I assume that they neither loiter nor traffic; that they violate no municipal law; and that in no other way do they harm or molest her Majesty's subjects. Perhaps the eminent jurist, who is quoted so triumphantly against them, will sustain my defence. We shall see. "Every vessel in time of peace," says the same Chancellor Kent, "has a right to consult its own safety and convenience, and to pursue its own course and business, without being disturbed, and without having violated the rights of others." Again, he says: "As the end of the law of nations is the happiness and perfection of the general society of mankind, it enjoins upon every nation the punctual observance of benevolence and good will, as well as of justice, towards its neighbors. This is equally the policy and the duty of nations." Still again: "No nation has a right, in time of peace, to interfere with, or interrupt, any commerce which is lawful by the law of nations, and carried on between other independent powers, or between different members of the same state." Nor is this all. "*Every nation is bound, in time of peace, to grant a passage, for lawful purposes, over their lands, rivers, and seas, to the people of other states, whenever it can be permitted without inconvenience.*"‡ Let us apply these principles to the case before us. In passing through Canso, our fishermen consult their "safety and convenience." They promote the "happiness" of mankind, for they are producers of human food. Their "purpose is lawful," for the crown lawyers themselves admit that the right of fishing in the Gulf of St. Lawrence is secured to them.

\* Inserted in the historical notice of the controversy in this report, under date of 1851.

† Kent's Commentaries, edition of 1832, vol. 1, pages 29 and 30.

‡ These several quotations are from Kent, edition of 1832, pages 28, 29, 31, 32, 33, and 34.

A report on Canso has become a regular legislative duty in the Assembly of Nova Scotia. The little colonial world will soon be gratified with another labored effort to show that our countrymen have "no right to pass through one of her Majesty's possessions." I commend to the committee of 1853 the passages which I have quoted, and which relate to the duties of nations in time of peace. I have the presumption, too, to suggest to the Queen's advocate, and her Majesty's attorney general, that though Selden was among the lights of his age, and though his *Mare Clausum* was once high authority, yet that since the progress of civilization has modified some, and changed other, rules of international law, it is time that the old and barbarous doctrine of exclusion from the navigation of internal straits between the main land and islands, as applied to vessels under sail, and making a direct voyage, ceased to distress the mariners of one Christian country when within the jurisdiction of another. Two centuries ago,\* when Selden, and his great antagonist, Grotius, wrote their celebrated treatises, it was the practice, under the public law, to confiscate the debts due to the subjects of an enemy at the commencement of hostilities; to regard an enemy as an outlaw and as a criminal, who had no right to life, even when unarmed and defenceless; to use poisoned weapons, employ assassins, violate females, and sell prisoners into slavery; and to confiscate, as contraband, provisions when in transitu to feed starving noncombatants and famishing women and children. If the abstract right exist to close Canso in time of peace against vessels under sail, it belongs to the same class of inhuman rules of the international code. "The English," says Montesquieu, "have made the protection of *foreign* merchants one of the articles of their national liberty." I commend the sentiment to the consideration of the English crown lawyers.

But let us take a practical view of the question before us. The peninsula of Nova Scotia is bounded on the northeast by the strait, or "gut," of which we are speaking, and is separated by it from the large island of Cape Breton. To save the long, difficult, and at some times of the year the dangerous voyage round this island, our vessels are in the constant practice of passing through Canso. The strait is lighted; and our flag contributes liberally to support *all* the light-houses on the coast. The "light-money" exacted is, indeed, so enormous—the benefit afforded considered—that our ship-owners complain of the exactions continually.† It is apparent at a glance that the sailing of a

\* Selden died in 1654; Grotius in 1645.

† The United States consul at Pictou, Nova Scotia, thus wrote to Mr. Forsyth, Secretary of State, in 1839: "The tax of six and two-thirds cents per ton register of shipping, collected by the province of Nova Scotia at the Strait of Canso, is levied on British as well as foreign ships; but it becomes a heavy charge on American vessels making four or five trips a year to this port, in the coal trade; and as there is no impost on shipping in American ports for the support of lights on the coast of the United States, such a tax on American vessels in the ports of the British colonies involves a discrepancy in the terms of intercourse between the two countries, although it professes to be based on strict reciprocity."

The Gloucester Telegraph, a paper which is authority on all matters connected with the fisheries, contained the following article, August, 1852:

"LIGHT DUTY AT THE BAY.—One of the most grievous things which our fishermen have to submit to at the Bay of St. Lawrence, is the payment of a light-duty. Our vessels have for years been obliged to pay this duty at the Gut of Canso, which is a tax upon the town of Gloucester alone of \$1,000 a year. This year every vessel which visits the harbor of Prince Edward Island is obliged to pay another tax, which is called



vessel over the sea between Nova Scotia and Cape Breton can, of itself, harm no one. This sea, be it understood, is very narrow, not exceeding, in some parts, one mile in breadth.

Having thus stated the case, we will illustrate the doctrine maintained by the crown lawyers, by one exactly parallel in all its points. The "McLane arrangement" in 1830, disposed of many of the difficulties which, from the peace of 1783, had embarrassed our intercourse with the colonies, and under its terms colonial vessels have freely used the straits, passages, and harbors of our entire coast. Thousands of these vessels visit our ports annually; and the "in-shore" voyage is invaluable to them during the stormy and boisterous months of the year. Every merchant engaged in navigation is aware that, as a class, the small vessels built in Nova Scotia and New Brunswick are far inferior to our own. To say nothing of the want of skill and sobriety in some of the masters, and nothing of the weak and misshapen hulls of many of the colonial craft, it may be remarked that a proportion of such as are employed in the transportation of wood and gypsum are fitted with the cast-off sails and cordage of timber-ships. To "dodge along shore" is the only safe course for these vessels to pursue, as none can deny. To allow them to do so, is but an act of common humanity. To deny them the "boon," would be to involve many in certain destruction.

And now, suppose that the legislature of Maine should remonstrate to our government on the subject, and insist that the people of that State suffer great wrong, because colonial vessels, when bound to Portland, Boston, and other northern ports, instead of keeping broad off at sea, "hug the shore" and pass through Edgemaroggin and Moosepeck Reaches, over Bass-harbor bar, through Fox Island thoroughfare, and between Monhegan and the main land. Suppose, too, that the legislatures of New York and Connecticut should join the frontier State and demand the exclusion of British vessels from Long Island Sound? Suppose, further, that finally the Attorney General of the United States should submit an opinion to the President, in which he should say that no stipulations giving the right to navigate these straits and this sound exist, either in the treaty of 1783, in Jay's treaty in 1794, in the treaty of peace in 1814, in the treaty of commerce

anchorage duty. As almost all of our vessels visit the island, this new duty about doubles the tax upon them. And again, if any of our vessels are driven by stress of weather into Miramichi, and some of the other ports on the main land, the anchorage duty, light-duty, port charges, &c., &c., are put upon them to the amount of \$20 more. Now, is this right? The Nova Scotia vessels which visit our harbors are subjected to port charges, amounting, for a vessel under one hundred tons, to only \$4 50. Why should our vessels, for merely passing through their waters, be subjected to so heavy a tax, while their vessels who visit us for the purpose of trading have the benefit of our light-houses, and only pay a trifling sum for port charges?

"It is said that the light-duty paid by our vessels is for the support of their light-houses. But what are those light-houses? There are two poor lights at the Gut of Canso, but none on the coasts visited by the fishermen, except, we believe, at Gaspe. There is no light on the whole northern coast of Prince Edward Island, which is most visited by our fishermen during the stormy months of September and October, when the lights are most needed. Our fishing-vessels alone pay light-duty sufficient to have the coast well lighted.

"The officers who collect these duties admit that they are unjust; but still they say their government must impose them. And how are they collected? The officers at the island offer to take most anything when the captain hesitates about paying the specie; they will take molasses, pork, and even oil clothes! This is a nice way to smuggle in the goods."

in 1815, in the convention of 1818, in the McLane arrangement in 1830, or in the last, the treaty of Washington in 1842; who would fail to see the inhumanity—nay, the outright wickedness—of the whole proceeding? Yet, were all this to be done, they would do no *more* than has actually been done by the political leaders of Nova Scotia and the crown lawyers of England. As a matter of right, the British colonists *can* be treated precisely as they require the government of England to treat us. If—as they aver, and quote international law to prove—the Strait of Canso is not open to *our* vessels under sail and passing to and from the Gulf of St. Lawrence, then, and for the same reasons—geographical and political—the “reaches,” sounds, straits, and “thoroughfares” along the coast of the United States, are not open to *them*. Can this position be denied?

In reply to Lord Falkland's fifth query, the law officers of the crown say: “With reference to the claim of a right to land on the Magdalene islands, and to fish from the shores thereof, it must be observed that, by the treaty, the liberty of drying and curing fish (purposes which could only be accomplished by landing) in any of the unsettled bays, &c., of the southern part of Newfoundland, and of the coast of Labrador, is specifically provided for; but such privilege is distinctly negatived in any settled bay, &c. And it must therefore be inferred that, if the liberty of landing on the shores of the Magdalene islands had been intended to be conceded, such an important concession would have been the subject of express stipulation, and would necessarily have been accompanied with a description of the inland extent of the shore over which such liberty was to be exercised, and whether in settled or unsettled parts; but neither of these important particulars is provided for, even by implication. And that, among other considerations, leads us to the conclusion that American citizens have no right to land or conduct the fishery from the shores of the Magdalene islands. The word ‘shore’ does not appear to be used in the convention in any other than the general or ordinary sense of the word, and must be construed with reference to the liberty to be exercised upon it, and would therefore compromise the land covered with water as far as could be available for the due enjoyment of the liberty granted.”

Will these *learned* gentlemen explain why the word “*shores*” is used in the convention in connexion with the right which we enjoy at these islands, while the terms “*coast*” and “*coasts*” are employed when defining our rights at Newfoundland and Labrador? The reason is very obvious to practical men. The Newfoundland and Labrador fisheries are *cod*-fisheries: the principal Magdalene fishery is a *herring*-fishery. The “*shores*” of the Magdalene islands are not wanted for the purpose of “drying and curing fish,” as the crown lawyers seem to suppose, but for using nets and seines. With all deference, then, their argument is not sound. The right to use the implements employed by British subjects at these islands is indispensable to our success in the herring-fishery there. The herring is never split and dried like the cod, nor is it cured on the shores of the Magdalenes. Hence there are no conclusions to be drawn from a statement of the limitations of “drying and curing” in the cod-fishery on other and distant coasts. Yet this is the reasoning by which we are to be deprived of the right to land and fish on the shores of the Magdalene islands. But I insist that the change of the terms “*coast*” and “*coasts*” to “*shores*” was meant to give the precise right which it is urged we cannot enjoy. To have said, in the



convention, that we might take fish on the *coast* and *coasts* of these islands, as really is said when speaking of the *cod*-fishery, would have been a vain use of words; but since the *herring*-fishery requires the use of *shores*, and without the use of shores cannot be prosecuted in the common way, the reason why the term was used in relation to that fishery is too manifest to need further illustration.

Still, as it is argued that, "if the liberty of landing on the shores of the Magdalene islands had been intended to be conceded, such an important concession would have been the subject of express stipulation," &c., it may not be amiss to consider the suggestion. And I reply that, if "a description of the inland extent of the shore over which" we may use nets and seines in catching the herring is necessary, it is equally necessary to define our rights of drying and curing the cod elsewhere, and as stipulated in the convention. Both are *shore* rights, and both are left without condition or limitation as to the quantity of beach and upland that may be appropriated by our fishermen. It was proclaimed in the House of Commons, more than two centuries ago, by Coke—that giant of the law—that "FREE FISHING" included "ALL ITS INCIDENTS." The thought may be useful to the Queen's advocate and her Majesty's attorney general when next they transmit an opinion across the Atlantic which is to affect their own reputation and the reputation of their country. The right to take fish "on the shores of the Magdalene islands," without conditions annexed to the grant, whatever these profoundly ignorant advisers of the crown of England may say to the contrary, includes, by its very nature and necessity, all the "incidents" of a "free fishery," and all the privileges in use by and common among fishermen, and all the facilities and accommodations, on the land and on the sea, which conduce to the safety of the men employed in the fishery, and to an economical and advantageous prosecution of it.

We have cause of thankfulness, however, that we possess the right to do at least one thing, under the convention, without being liable to the pains and penalties of her Majesty's court of vice-admiralty. The sixth query of Lord Falkland is answered in our favor, and as follows: "By the convention, the liberty of entering the bays and harbors of Nova Scotia, for the purpose of purchasing wood and obtaining water, is conceded in general terms, unrestricted by any condition, expressed or implied, limiting it to vessels duly provided at the commencement of the voyage; and we are of opinion that no such condition can be attached to the enjoyment of the liberty."

But Lord Falkland is not to be excused for proposing the inquiry. That his question may not be lost sight of, (though once inserted,) it is here repeated. "Have American fishermen," he asked, "the right to enter the bays and harbors of this province, [Nova Scotia,] for the purpose of purchasing wood or obtaining water, having provided neither of these articles at the commencement of their voyages in their own country; or have they the right only of entering such bays and harbors in cases of distress, or to purchase wood and obtain water after the usual stock of those articles for the voyage of such fishing craft has been exhausted or destroyed?"

Did his lordship really believe that our fishing vessels ever, and under any circumstances, depart from home "without providing" wood and water? But, on the supposition that they always do make a voyage of three hundred miles with stocks of neither, what then?

Common charity might dictate that their improvidence should not be punished with an interdiction against procuring articles of so indispensable necessity at the earliest possible moment. Lord Falkland lives in the middle of the nineteenth century: he is a British peer: he is yet the governor of a British colony: he is the husband of a daughter of a British king: and he never should have said, substantially, that an American fisherman, when found in a British colonial harbor bargaining with a subject of her Majesty for a boat-load of fuel, or craving leave to fill his water-cask at a well, or presuming to dip a few gallons from a running brook, would be adjudged a lawful prize, unless able to prove to her Majesty's judges of vice-admiralty that the "usual stock of those articles for the voyage" had been "exhausted or destroyed."

The sixth query was, however, necessary to complete the series, and illustrate the spirit of the whole. The seventh and last answer requires no comment, as it merely announces that—

"The rights of fishery ceded to the citizens of the United States, and those reserved for the exclusive enjoyment of British subjects, depend altogether upon the convention of 1818, the only existing treaty on this subject between the two countries; and the material points arising thereon have been specifically answered in our replies to the preceding queries."

That this opinion is not conclusive against us, and that, indeed, it has no binding force whatever, hardly need be said; especially since there is probable cause to believe that it was paid<sup>a</sup> for in the common course of professional duty. But whether the Queen's advocate and her Majesty's attorney general did or did not appear in the "case" submitted to them as the counsel of Nova Scotia, is a matter of no moment to us. The judgment which they have rendered, and the examination of which is now concluded, deserves no respect either for its law, its common sense, its humanity, or its justice. Its only claim to the notice bestowed upon it consists in the fact that it is relied on to prove that we are in the wrong and England in the right, in the controversy which has arisen as to the intent and meaning of the convention of 1818.

We are now ready to inquire what, up to 1841, was the British construction? First, however, let us glance at the British pretension prior to the concluding of the convention. In 1817, in the orders of Admiral Milne to Captain Chambers, under which several American vessels were seized, it is said: "On meeting with any foreign vessel fishing or at anchor in any of the *harbors or creeks* in his Majesty's North American provinces, or *within our maritime jurisdiction*, you will seize," &c. Here is the extent of the British claim. Captain Chambers, in reporting his doings to his commander-in-chief, remarked that he "did not receive any intelligence of foreign vessels being *within our jurisdiction* until the 3d instant," (June 3, 1817,) when he was informed "that they constantly resorted to the *creeks* on this coast in order to catch their bait, clean their fish, wood, water, &c." The *harbors* of Cape Negro and of the Ragged Island, he said further, were visited by such vessels; and in these *harbors* and for resorting to these *harbors* he captured eleven American fishermen.

<sup>a</sup> When Lord Falkland solicited Lord John Russell to submit his queries, he said: "I am authorized by the House of Assembly here to defray any expense that may be incurred in obtaining such opinion," &c.



The bodies of sea-water of more than six miles in width were not claimed, then, in 1817, and pending the negotiations; and Admiral Milne acted in strict conformity to Lord Bathurst's suggestion to Mr. Adams in 1815, that we must relinquish "the harbors and creeks," and the "maritime jurisdiction three marine miles from the shore." If the construction of the crown lawyers is just, it follows that the convention in 1818 is an injury rather than a benefit, for the simple reason that previous to that year we were allowed to fish in the bays which, it is pretended by these gentlemen, we cannot enter under the stipulations of that instrument.

What, in the second place, has been the course pursued *since* 1818? Some of the colonial writers have affirmed during the present year, (1852,) that the act of Parliament of 1819 (cited in this report) asserts the British construction as now maintained. It is not so. The act does indeed recite the first article of the convention, and was passed in consequence of it; but it does not contain a word which defines the term "bays," or which indicates the manner of measuring the three-mile interdiction. It authorizes the seizure of vessels that should violate its provisions. The proceedings of British naval officers on the American stations, who have always been furnished with a copy of the act, and with a copy of the convention, and whose orders from the Lords of the Admiralty have always been founded on both, will enable us to ascertain whether or not the ships-of-war have allowed our vessels to fish anywhere and everywhere, in the bays and outside of the bays, more than three miles from the shore.

While my home was on the eastern frontier, hardly a year passed without my seeing one or more ships of the royal navy which were employed on this service in the Bay of Fundy; and I am sure that a case of seizure for "fishing broad" in that bay never occurred previous to the year 1843. Even Captain Hoare, of the *Dotterel*, who, as we have seen, spread consternation among our fishermen in 1824, and subsequently, informed Admiral Lake, his commander-in-chief, that his orders to the officers in command of his armed boats had been to capture only such American vessels as "they found within three marine miles of the shore," and to except those "in evident distress, or in want of wood and water." The same was observed elsewhere. The report of Captain Fair, of her Majesty's ship *Champion*, in 1839, shows that he passed through a fleet of six or seven hundred American vessels in various positions—some within the headlands of the bays, and some along the shores; but none within the three-mile interdiction. His frank declaration on the subject is honorable to him. While cruising in the vicinity of Prince Edward Island he states that there was not "a single case which called for our interference, or where it was necessary to recommend caution; on the contrary, the Americans say that a privilege has been granted them, and that they will not abuse it." That, in allowing several hundreds of our fishermen to pursue their avocation without molestation, his conduct was in accordance with his instructions, we have positive evidence; for Lieutenant Paine, who visited the fishing grounds the same year in command of the *Grampus*, stated after his return, in a letter to the Secretary of State, that the orders of "Admiral Sir Thomas Harvey, as he informed me, were only to prevent" our countrymen from "fishing nearer than three miles." But

the authorities of Nova Scotia, said Lieutenant Paine, "seem to claim a right to exclude Americans from all bays, including those large seas—such as the Bay of Fundy and the Bay of Chaleurs; and also to draw a line from headland to headland, the Americans not to approach within three miles of this line."

Here, then, two years before the crown lawyers gave the opinion under examination, is our first knowledge of the "headlands." It was but whispered even in 1839. The naval officers knew nothing about it. Our government knew nothing about it until 1841, when Mr. Forsyth, in a despatch to Mr. Stevenson, our envoy to the Court of St. James, called his attention to it. "From the information in the possession of the department," he observed:

"It appears that the provincial authorities assume a right to exclude American vessels from all their bays, even including those of Fundy and Chaleurs, and to prohibit their approach within three miles of a line drawn from headland to headland. These authorities also claim a right to exclude our vessels from resorting to their ports unless in actual distress, and American vessels are accordingly warned to depart, or ordered to get under weigh and leave a harbor, whenever the provincial custom-house or British naval officer supposes, without a full examination of the circumstances under which they entered, that they have been there a reasonable time."

As yet, however, the colonists had not ventured to enforce the pretension they had set up. Lord Falkland, in a despatch to Lord Stanley dated in May, 1841, affirms this; for he says:

"In point of fact I have not been able to learn that any seizures have been made when the vessels have not been within three miles of the distance prescribed by the statute, or considered so to be, although it is true that the Bay of Fundy, as well as smaller bays on the coast of this province, is thought by the law officers in the province to form a part of the exclusive jurisdiction of the crown."

Besides, how happens it that if the "King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons" in Parliament assembled, meant to exclude—and by the act of 1819 actually did exclude, as far as the action of one government could do so—our vessels from the bays now in dispute; how happens it, I ask, that in 1841, twenty-one years afterwards, the queries of Lord Falkland before us were submitted to the crown lawyers? On the ground that Parliament had *already* construed the convention as his Lordship desired that it should be interpreted, why did not the British minister to whom these queries were transmitted so state in reply? The act of 1819 was the supreme law of the realm; and if the commanders of the ships of the royal navy on the American station had been instructed year after year, and for twenty-one years, to execute it, and to consider it as a construction of the convention in the sense *now* contended for, why were every one of these commanders so very unfaithful to their duty? Why was the fact that their orders from the admiralty required them to hunt up and to drive out all American fishermen from these bays unknown to everybody, in England and America?

Three years previously (1838) Lord Glenelg, the Secretary for the Colonies, in a communication to Sir Colin Campbell, lieutenant governor of Nova Scotia, in answer to a joint address to the Queen from



the Legislative Council and House of Assembly of that colony, complaining of the habitual violation by American citizens of the convention of 1818, promises that an armed force shall be kept, annually on the fishing grounds; and states that "her Majesty's minister at Washington had been instructed to invite the friendly co-operation of the American government" to enforce a more strict observance of that convention. Here was a very proper opportunity to refer to the provisions of the act of Parliament of 1819, and to give our government Lord Glenelg's construction of it. But instead of this, he tempers the expectations of the colonists by saying, that "The commanders of these vessels will be *cautioned* to take care that, while supporting the rights of British subjects, they do not themselves overstep the bounds of the treaty."

Lord Aberdeen, April, 1844, in a letter to Mr. Everett, adopts the opinion of the crown lawyers. This, I suppose, was the first unqualified official avowal to a functionary of our government of the headland construction of the convention. His lordship, in March, 1845, in another communication addressed to Mr. Everett, reaffirms this construction, and distinctly states that with reference to the Bay of Fundy and the other bays on the British American coasts, "no United States fisherman has, under that convention, the right to fish within three miles of the entrance of such bays as designated by a line drawn from headland to headland at that entrance."

Our right, therefore, to the bays in dispute rests upon the British interpretation of the treaty, as well as our own.

Nor are we unsupported by colonists. Some, with great fairness, admit all that we claim. Two examples will suffice. A respectable colonial newspaper, in commenting, in 1845, upon Lord Stanley's despatch of March 30, of that year, which, it will be remembered, opens the Bay of Fundy, objects to the measure on the ground that our privileges were already ample: for, it remarks, "in the convention of 1818, it is stipulated that the citizens of the United States shall be allowed to fish within three nautical miles *around* all our coasts;" that instrument, it argues, "should have *reserved* to us [to British subjects] the quiet and undisturbed possession of our *bays and inlets*." The article from which this extract is made is able, and was copied into several other colonial newspapers.\*

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\* Some of the colonial newspapers still maintain similar views. The St. John New Brunswick said, in August, 1852, in commenting on Mr. Webster's despatch or proclamation, that "it will be seen that Mr. Webster labors under the impression that her Majesty's government are about to enforce the convention strictly, according to the opinions of the law officers of England. We believe that such is not the case. *For some years past there has been a tacit understanding that American fishing vessels should only be excluded from those bays or inlets of our coasts which were less than six miles wide, and within which American vessels could not fish unless within three miles of the land, either on the one side or the other. There is not the slightest necessity for straining the terms of the convention, for it is notorious that American fishing vessels pursue everywhere near the shores of these provinces, within three miles of the land, where only in the autumn they get the best fishing; and it is to prevent this flagrant and acknowledged breach of the convention that the present movements are taking place.*"

The St. John News, in the same month, disavowed the *new* construction of the convention in these words:

"Now all this tempest in a tea-pot amounts to just nothing at all, and we think the American press will find out before a very great while that they have been wasting their powder, and getting nothing in return but pity for their ignorance. They will learn that the legislatures of these provinces have not attempted to give a new reading to the

The second instance is from the letters of the Hon. G. R. Young (a distinguished gentleman of Nova Scotia) to Mr. Stanley.\*

"As early as the month of March," wrote Mr. Young, "if any stranger approached the coasts of Nova Scotia, his observations would induce him to believe that he was advancing to the territory of some great commercial state. At a short distance from the shore, and on the banks and most productive fishing grounds, he would perceive fleets or continuous lines of small shallops; and if the day and season were auspicious, he would discover that their crews were busily employed in drawing forth the treasures of the deep. *Seeing them thus anchored within view, nay, within almost the shadow of the shore*, and employed in appropriating the resources which would appear to belong to it, the deduction would be irresistible that they had recently left the neighboring harbors, and were manned by their inhabitants. He would, however, be in error. On inquiry he would learn that they have come a distance of three hundred miles, to avail themselves of the privilege—that they belonged to a rival state, and that they enjoyed the right by virtue of a treaty, which the government have bestowed without necessity and without return. He would learn, also, that this liberal concession was highly disadvantageous to the inhabitants on the coast by lessening the productiveness of the fishing grounds."

That the ministry consented to act on the opinion of the Queen's advocate and her Majesty's attorney general, with much reluctance, is very obvious. The first proof is found in their delay in transmitting it to the colonial governor who furnished the "case" on which it is founded. In the despatch which accompanied it at last, Lord Stanley remarks that "the subject has frequently engaged the attention of myself and my colleagues, with the view of adopting further measures, if necessary, for the protection of British interests in accordance" therewith. But he adds: "We have, however, on full consideration, come to the conclusion, as regards the fisheries of Nova Scotia, that the precautions taken by the provincial legislature appear adequate

treaty—neither has England; that they do not refuse to American fishermen the privilege of taking fish in the Bay of Fundy; whether right or wrong, is another thing.

"All that we intend to do is nothing more nor less than we have been doing for the last thirty years—and that is, to seize vessels caught within three miles of the shore, taking fish contrary to the treaty, as *thoroughly understood* both by England and America, and also by the fishermen themselves. Whenever it can be shown that an American vessel has been taken outside of the prescribed limits, then it will be time enough for our neighbors to get in a pucker."

A newspaper published at Charlottetown, Prince Edward Island, (also in August, 1852,) in an article in answer to the question "Is war probable?" advocates the policy of permitting the Americans to have access to the colonial shores, and remarks: "But a very pretty quarrel with America is by no means improbable, if our cruisers insist on capturing all Yankee fishing vessels nearer the shore than three miles outside of a line drawn from opposite headlands of a bay. Notwithstanding the opinion of the English crown law officers, this interpretation of the treaty will throw the argument entirely into the hands of the Americans. If the headlands be low, or the bay wide, like the entrance to the Bay of Chaleur, it is not possible for the fishermen to know, or to estimate, their true position in regard to those headlands. The horizontal line of vision, from the deck of a schooner, is intercepted by the convexity of the earth at a distance of six or eight miles. It is not to be concealed that a capture made, or a shot fired, under these circumstances, might produce war. And if war be the result, can Britain rely on the hearty co-operation of the provincials? Exceedingly doubtful. Will the Canadians submit to have their flourishing towns and villages destroyed, and their families slaughtered, in order to protect a few unprofitable fisheries in the Gulf of St. Lawrence?"

\* Now the Earl of Derby.



to the purpose, and that being now practically acquiesced in by the Americans, no further measures are required." The opinion thus disposed of in November, 1842, was suffered to rest until the capture of the Washington and the Argus. Mr. Everett's arrangement in 1845 was, in effect, an abandonment of the whole matter.

Seven years of comparative quiet on the fishing grounds elapse, and we are brought to the exciting events of 1852.

There is another remarkable circumstance connected with this controversy, which should not escape notice—namely, that New Brunswick, Prince Edward Island, and Canada, up to the time of the Toronto agreement in 1851, remained almost passive spectators of the belligerent attitude of their sister colony of Nova Scotia. The subject of "American aggressions"—as we have shown—has been one of profound interest to the last mentioned dependency of the crown for a long period. To find commiseration neither at home nor abroad, is a grievance hard to be borne. To show, year after year, and for an entire generation, in petitions to the throne, in legislative reports, and in newspaper essays, that the most ruinous consequences had resulted, and would continue to follow the permission to Americans to pass through the Strait of Canso, and to fish in the bays of British America, and yet, after all, to awaken no sympathy on the part of fellow-colonists, and no determined action on the part of the ministers of the Queen, is a misfortune which even the aggressors themselves are bound to appreciate.

But I may say that fishermen, without treaty stipulations to favor and protect them, have sometimes fared far better than it is possible for ours to do, if the views of the crown lawyers are carried out in their most obvious sense.

The fishermen of almost every civilized nation have pursued their business either on implied or written sanctions. They have been permitted to follow their calling even in war. The hostile relations between England and Holland—though the ocean was stained with the blood of the subjects of each for several generations—did not, except in particular cases and for short periods, break up the Dutch fishery on the English coast. In the war of our own Revolution, "rebels" though we were, Berkeley, of the Scarborough frigate, while occupying the Piscataqua, allowed the fishermen of that river free pass, out and in; and so, too, Admiral Digby, moved with compassion for the sufferings of the people of Nantucket, gave them written permits to resume whaling; and the fact that a vessel\* thus protected by his humanity was the first to bear our new-born flag to the Thames, and to draw out all London to see it, will be remembered, perhaps, when the records of battles shall be torn and scattered.

Nor did the war of 1812, with all the desolation and bad feeling which it caused, form an exception to the rule so commonly observed. I refer for instances to the passports of Admiral Hotham to the people of Nantucket; to the permissions granted by Sir George Collier to all fishing-boats and vessels under thirty tons; and to the ordinary and almost universal practice of British commanders along our coast, of allowing the taking of fish to be carried to our towns and cities, and to

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\*Her arrival was announced in Parliament. Mr. Hammet said he "begged leave to inform the House of a very recent and extraordinary occurrence." After stating the name—"the Bedford, Moores, master"—he adds, she "wears the *rebel* colors, and belongs to the island of Nantucket, in Massachusetts."

be consumed fresh. And yet, our public and private armed ships, as these very officers knew, were manned in a good measure by the class of men to whom these indulgences were granted. How many in the same service with Digby, Hotham, and Collier are there *now* in commission, who will "crowd sail aloft and aloft" to hunt up and drive out such of our fishermen as shall continue to visit the "bays" interdicted in consequence of colonial importunities and representations, by the present prime minister of England, while holding the office of Secretary for the Colonies?

In the course of frequent researches among state papers, I do not remember to have seen a public document of such a singular character as his lordship's despatch to Lord Falkland. The American people are distinctly told in it that colonial interference has alone prevented the home government from executing a determination already formed to put an end to all difficulties on the fishing grounds within British jurisdiction. How often has it happened that an English statesman, while assuming the political responsibility of an act, has cast the moral responsibility of it upon the subjects under his special care? When has a secretary for the colonies made known to the world that the representations of colonists have set aside the "intentions" of the cabinet ministers of the crown? I do not ask how often colonial remonstrances have actually prevailed with the ministry; but how frequently has colonial opposition to a course of policy been *avowed* by ministers as their reason for a change of purpose? The common form of announcing a cabinet decision is not that employed by Lord Stanley, in his despatch of March 30th to Sir William Colebrooke;\* still that decision was deemed honorable and liberal. The motive there stated for opening the Bay of Fundy is, "*the removal of a fertile source of disagreement*" between the United States and Great Britain. But in the despatch to Lord Falkland, of September 17th, though the same inducements existed in full force for her Majesty's government to execute the "intention" of opening the other "bays" to our fishermen in order to perfect and perpetuate harmonious feeling, yet that "intention was abandoned" on account of Lord Falkland's "statements."

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\*This document has not been previously inserted. It bears date March 30, 1845, and is addressed to Sir William Colebrooke, lieutenant governor of New Brunswick. It was the first official annunciation to the people of that colony of the arrangement with Mr. Everett. The colonial newspapers commented upon the course of the ministry in terms of great severity, directly, and for some time after its publication.

"SIR: I have the honor to acquaint you, for your information and guidance, that her Majesty's government have had under their consideration the claim of citizens of the United States to fish in the Bay of Fundy—a claim which has hitherto been resisted on the ground that that bay is included within the British possessions.

"Her Majesty's government feel satisfied that the Bay of Fundy has been rightly claimed by Great Britain as a bay within the treaty of 1818; but they conceive that the relaxation of the exercise of that right would be attended with mutual advantage to both countries: to the United States as conferring a material benefit on their fishing trade, and to Great Britain and the United States conjointly and equally by the removal of a fertile source of disagreement between them. It has accordingly been announced to the United States government that American citizens would henceforward be allowed to fish in any part of the Bay of Fundy, provided they do not approach, except in the cases specified in the treaty of 1818, within three miles of the entrance of any bay on the coast of Nova Scotia or New Brunswick.

"I have, &c.,

"STANLEY."



This despatch has been once quoted; but since it should be continually kept in view, it may be cited again:

“DOWNING STREET, *September 17, 1845.*

“MY LORD: \* \* \* \* \* Her Majesty's government have attentively considered the representations contained in your despatches, Nos. 324 and 331, of the 17th June and the 2d July, respecting the policy of granting permission to the fisheries of the United States to fish in the Bay of Chaleur, and other large bays of a similar character on the coast of New Brunswick and Nova Scotia; and, apprehending from your statements that any such general concession would be injurious to the interests of the British North American provinces, we have abandoned the intention we entertained upon the subject, and still adhere to the strict letter of the treaties which exist between Great Britain and the United States, relative to the fisheries in North America, except so far as they may relate to the Bay of Fundy, which has been thrown open to the North Americans under certain restrictions.”

There are fish enough in the American seas for *all* who speak the Saxon tongue—for *all* of the Saxon stock. England, we may hope, will not maintain a position so likely to produce troubles like those of olden time which existed between us, as colonists, and the French, and of which I have elsewhere spoken. Fishermen are but poor interpreters of international law and of unreal and fictitious distinctions. To them, the open sea, the great “bays,” are but one—but a continuous fishing ground; and few of them, I apprehend, will ever see or respect the lines which colonial ingenuity has “drawn from headland to headland” of these “bays.”

I conclude the topic with expressing the conviction—to which all practical men will assent—that, if the *new* construction of the convention of 1818 be persisted in and actually enforced, we shall lose quite one-third of our cod and mackerel fisheries. Let not our colonial brethern press us too far. Self-conquest is the noblest of all victories; and, in all kindness, let them be urged to subdue their hatred of “the Yankees.” The children of the whigs of a former day demand free access to all the seas of British America. They require the use of every sheet of sea-water six miles wide all around the colonial coasts—not by courtesy, but as a matter of right; and they will be satisfied with nothing less. The attempt to exclude them has already caused much unneighborly feeling, and, if continued, will occasion wrangling and quarrelling on the fishing grounds. The end, no one is wise enough to foresee.

The colonists have toiled a whole generation to move the British government to “protect them from the aggressions of the Americans.” They have apparently, and for the moment, accomplished their object. But will they themselves catch a fish the more, or become a single guinea the richer, in consequence of the opinion of the crown lawyers and of Lord Stanley's two despatches? They have achieved a state-paper victory, at the expense of right and of humanity. Some of our countrymen have neither the money nor the credit to procure and fit out the class of vessels required in the Newfoundland and Labrador fisheries, and are compelled by the necessities of their position and condition to resort, in the smaller craft, to the coasts of New Brunswick and Nova Scotia to earn subsistence. Exclusion to such, is a

great wrong. Nay, it is a wrong to colonists themselves, and to hungry and starving women and children, whom they *always* meet on particular parts of the colonial coasts when making their "spring fare," and whose necessities they seldom refuse to relieve, even to their own deprivation. The fact is not to be disputed. Nor is this all. Our fishermen are often of service in other respects. I have room for but a single instance. In a gale, in 1845, at Shippigan\*—within one of the interdicted "bays," be it remembered—upwards of one hundred British fishermen, exposed to the fury of the storm in open boats, were preserved from death by the courage and exertions of the Americans there, who were fishing in decked vessels.

The act of Nova Scotia, passed in 1836, claims our attention. Under this law an American vessel "preparing to fish" within three miles of the coast is liable to be forfeited; *the owner or claimant of such vessel, in case of seizure for an alleged violation of this or of any other provision of the law, is required to show that there was no ground of seizure or to pay treble costs*; the owner or claimant is also compelled to appeal from the seizing officer to the admiralty court, and try his action there within three months, or to lose all remedy; the owner or claimant is compelled to give one month's notice of his intention to contest the legality of the seizure, and to embody in such notice every fact and circumstance on which he means to rely to prove the seizure without good cause, and to show, before trial, that the seizing officer has been notified in form and within the time prescribed. The seizing officer, on the other hand, may inflict the most wanton injury, and escape unharmed. The 13th section provides, "that in case any information or suit shall be brought to trial on account of any seizure made under this act, and

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\*This gale was on the 18th of July. The Miramichi Gleaner, of August 9, thus spoke of it and of the unknown humane American captains: "On the 18th ultimo this place was visited with one of the most fearful gales ever remembered by the oldest fisherman. On the morning of that day the wind blew lightly from the southwest, and the appearance of the day so fine that every boat belonging to Shippigan, Carraquet, and Miscow, put off for the fishing grounds, with every prospect of a fine catch. Up to this time not a cloud was to be seen, and the horizon gave no indication of an approaching storm, when about 10 a. m. the wind veered round to the northwest and blew a perfect hurricane. The violence of the wind carried everything before it; schooners, boats, and flats were upset and driven on shore. Amongst the boats which had proceeded to sea, fear and consternation prevailed. They had no alternative but to weigh anchor and be driven before it off the land; the sea was running mountains-high, and as, from the violence of the wind, they were unable to carry sail, every succeeding sea threatened to engulf their tiny barks. By this time they had lost sight of land, when, fortunately, some American schooners, fishing for mackerel on the Bradille and Orphan banks, hove in sight, and, on seeing the perilous situation of the boats, these humane men immediately got under weigh and stood towards them. As the gale was increasing, and the schooners considerably to leeward, they signalled them to bear down, and by skill and good seamanship happily rescued every soul on board, and made fast as many as possible to the schooners, and directed their men to anchor the remainder on the banks and leave them to their fate. By this noble act every soul, amounting to one hundred, was saved. On Saturday, after the violence of the gale had somewhat subsided, the schooners stood in for the shore and landed the men and boats in safety. A small vessel was immediately procured and despatched in search of the boats which had been left at anchor on the bank at Miscou island, (twelve in number,) and, strange to say, found them all safe. As some of the men had lost their clothes, the American captains generously distributed a quantity of wearing apparel amongst them.

"One of the strange captains reports, that at the commencement of the gale he perceived several boats laboring heavily, and bore up to render some assistance, but as they disappeared suddenly it is feared they have all gone down; it is supposed they belonged to the Canada side. It is much to be regretted that neither the names of the schooners nor of the captains are known here, in order that they may be publicly thanked.



a verdict shall be found for the claimant thereof, and the judge or court before whom the cause shall have been tried shall certify on the record that there was probable cause of seizure, the claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any action, indictment, or other suit or prosecution, on account of such seizure; and if any action, indictment, or other suit or prosecution, shall be brought to trial against any person on account of such seizure, wherein a verdict shall be given against the defendant, the plaintiff, besides the thing seized, or the value thereof, shall be entitled to no more than twopence damages, nor to any costs of suit, nor shall the defendant in such prosecution be fined more than one shilling." No American citizen can speak of this infamous law with calmness. Well did Mr. Forsyth\* say that some of its provisions were "violations of well-established principles of the common law of England and of the principles of all just powers and all civilized nations, and seemed to be expressly designed to enable her Majesty's authorities, with perfect impunity, to seize and confiscate American vessels, and to embezzle, almost indiscriminately, the property of our citizens employed in the fisheries on the coasts of the British possessions." Well, too, did Mr. Everett† stigmatize it as possessing "none of the qualities of the law of civilized States but its forms;" and Mr. Davis,‡ as being "a law of a shameful character," and "evidently designed to legalize marauding upon an industrious, enterprising class of men, who have no means to contend with such sharp and unwarrantable weapons of warfare."

These are strong expressions; but they were uttered by gentlemen who measure their words, and are entirely true. Nay, more; for I shall presume to add that the politicians of Nova Scotia remind us of the theory of Hobbes, who maintained that the natural state of man is a state of war against all; since these very *loyal* gentlemen are in continual dispute with one another, with the government of the mother country, with British subjects in other colonies, and with the people of the United States. In fact, these persons, in their various contests, have succeeded in making Nova Scotia the Barbary power of this hemisphere. It was contended in England, as late as the opening of the present century, that the capture and sale of an English ship by Algerines was a piratical seizure. I am disposed to regard the proceedings against American fishing vessels, under the authority derived from the act of 1836, as open to the same objection. When, in 1824, young Howard and his associates rescued the Ruby and the Reindeer from the possession of the captors, the British government—as we have seen—made formal and repeated demands for reparation; but it may be difficult to show what other or greater right to interpret the convention of 1818 can possibly belong to a British colony than was exercised by this party of American youth. If Nova Scotia may lawfully interfere with, and legislate upon, a matter which is entirely national, so may Massachusetts and Maine. That colony is but a dependency of the British crown; the colonial armed cutters are mere corsairs, and their seizures of our property are acts of piracy. The sea-robbers hold our vessels at their mercy. The act of 1836 places

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\* Despatch to Mr. Stevenson, February 20, 1841.

† Letter to Lord Aberdeen, April 2, 1845.

‡ Letter of Hon. John Davis, to the fishermen of Massachusetts, September 1, 1852.

them above responsibility, and screens them from punishment. The term "*preparing to fish*," allows them to seize our vessels under every imaginable pretence. The repairing of damages to sails, rigging, and boats; the arranging or reeling of lines; the preparation of bait; the eating of food; the mending of garments, are all prohibited—for all are performed with reference to the main objects of the voyage. An American vessel, when within three miles of the coast, or when in a harbor for shelter, cannot escape seizure, if the colonial cutters enforce the law; for it is obvious that everything done on board may be embraced in the comprehensive words—"preparing to fish." The act is a flagrant violation of the convention, which restricts us in certain particulars, when within three marine miles of the colonial shores; but "*preparing to fish*" is not among the interdictions. The convention provides, "That the American fishermen shall be admitted to enter such bays or harbors for the purpose of shelter, and of repairing damages therein, of purchasing wood and of obtaining water, and for no other purpose whatever; but they shall be under such restrictions as may be necessary to prevent their taking, drying, or curing fish therein, or in any other manner whatever abusing the privileges reserved to them." What, then, is the common sense construction of these words? I reply, that a fishing vessel at home, secured at her owner's wharf, is said to be "*preparing to fish*" when, among other things, her crew are "*repairing*" her, and are taking in "*wood*" and "*water*;" and that a repetition of these acts, when in a colonial harbor, constitutes the same preparation. If this interpretation is just, it follows that while our vessels cannot take, dry, or cure fish within the colonial harbors, or within three miles of certain colonial coasts, they can *prepare* to do one and all, whenever necessity arises; responsible only for "*abusing the privileges reserved to them*."

The absurdity, the inhumanity, of the pretensions set up by Nova Scotia, can be shown by the report of one of her own officers. "I have seen," says Paul Crowell,\* (February, 1852,) "instances where American vessels had been fishing the whole of the day, and towards evening, a gale springing up, they were forced to run for a harbor with fifty or sixty barrels of fresh mackerel on deck; and if salting those fish is understood curing fish—which I think is the only way in which mackerel can be cured—under those circumstances these people must cast their fish into the sea again, or run the risk of having the vessel and cargo seized."

And again: "When cruising in the schooner *Telegraph*, last fall, being in Little Canso, an American vessel lay near. Observing the men busily employed on deck, I manned my boat and boarded her; I found them employed grinding bait for mackerel. The captain appeared quite innocent, and said he had been so careful that he had not taken a lobster while in the harbor. This might be understood '*preparing to fish*.'"

This gentleman, to his honor, refused to seize the vessels to which he refers; but, under the new construction of the convention, they were all prizes. He states truly, that mackerel caught on the eve of a gale, and not dressed and salted at sea at the peril of human life, cannot be "*saved*" in a colonial harbor resorted to for shelter, without involving the loss of vessel and cargo; and that confiscation also

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\* The Crowells of Cape Cod are of the same lineage.



awaits those who, in the same barbarous precincts, presume to use a bait-mill! The degree of civilization in colonial legislation is wonderful, and without a parallel, except in Tunis or Tripoli.\*

As the concluding topic, we pass to examine into the causes of the seizure of our vessels, by ships of the crown and by the colonial cutters, for alleged "aggressions."

Chronological order is not material to the inquiry, and will be disregarded. In many cases we have the seizing officer's own account. Thus says one:

"I found the said American schooner Rebecca at anchor, cleaning fish and throwing the offal overboard. It being fine weather, and they having three barrels of water on board, with a sufficient quantity of wood, I detained her, and took her to St. John."

Again, reports the same officer to his superior:

"I found the American fishing schooner William anchoring in Gull cove; the weather was fine until after she got in, when it came on foggy, with light breezes; and they having two barrels of water on board, which myself, Mr. Tongeau, and boat's crew subsequently used from, and plenty of wood, I detained her."

Still again:

"I received information from the fishermen at Gull cove, as well as from the master and crew of the fishing schooner Minerva, of Grand Menan, that an American schooner was at anchor at Beal's passage. I went out from Gull cove, and saw her there; at nine o'clock in the evening I boarded her, which proved to be the American fishing schooner Galeon, and found all the crew asleep. On questioning the master the reason of his being there, he told me he had come to throw the gurry (offal of the fish) overboard. They not being in want of wood or water, and a fine fair wind for them, I detained her, got her under weigh, and ran for Gull cove, a direct course for their fishing ground. What the crew of the last mentioned vessel asserted in their protest is not true. I never said that I would release their vessel, but told them that it was not in my power to do it, as they had decidedly violated the treaty of convention between England and the United States; but as they pleaded poverty, saying their vessel was their sole support, I told them I would recommend their case to Captain Hoare, of the Dotterel, my commanding officer."

The schooner Battelle was seized for setting nets in a harbor, and for this offence was condemned; the Hero was seized because one of her crew dressed some fish on shore; the Hyder Ally was seized and condemned for using nets within three miles of the coast; the capture of

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\* As an instance of the falsehoods resorted to in Nova Scotia to inflame the minds of the colonial fishermen, I cite the following paragraph which appeared in a Halifax paper in 1845:

"*Mackerel fishery.*—About four hundred vessels engaged in the mackerel fishery (from the coast of Nova Scotia and Cape Breton) arrived at the port of Gloucester (United States) on Sunday, September 27. Their cargoes averaged one hundred barrels. Thus this fleet had upwards of forty thousand barrels of fish—pretty pickings enough! The whole catch of our provincial fishermen will not exceed ten thousand barrels."

There is one other "fish story" equal to this, namely: Some six hundred years ago, a woman-fish direct from the ocean made her appearance among the fishermen of Holland, with whom she lived awhile in great amity; but desiring finally to see her children, she took affectionate leave of the kind Dutchmen, and returned to her old home in the sea, where, for aught that appears in history, she is alive at this day. The skippers above mentioned reported falling in with her on the "coast of Nova Scotia and Cape Breton" in 1845, but the veracious Halifax editor suppresses the important fact.

the Madison was solely upon the suspicion that her master had been engaged previously in an affray with the boat of a British man-of-war.

Mr. Towneau, a midshipman of the Dotterel, in his examination, gives the following account of the seizure of the schooners Reindeer and Ruby:

"I recollect while in Gull cove of having received information on a Sunday, from some men and a Mr. Franklin, that several American fishing vessels were at anchor in White Head harbor, and that they anchored there the evening before; that on their anchoring one of them fired three muskets, and said they were armed and manned and would oppose our boarding them. I acquainted Mr. Jones with the information I had received, who went immediately in the small boat to cruise, and returned in the evening. He told me that he had boarded an English fishing schooner (Industry) near White Head, who gave him information that several American schooners were at anchor at Two Island harbor, and that they got their wood and water at White Head. They fired several muskets on their anchoring, and told the crew of the Industry they would not allow a man-of-war's boat to board them; and after they completed their wood and water, they shifted to Two Island harbor. We got the yawl under weigh about nine o'clock in the evening and went towards Two Island harbor, and anchored about two o'clock in the morning. At daylight we observed several vessels at anchor at Two Island harbor, and shortly after got under weigh, when we chased them. Observed three of them lashed together, and all the crews collected on board the middle one. We ordered them to separate, which at first they refused to do, until Mr. Jones threatened to fire on them. They dropped clear of each other. We boarded them, and detained the American schooners Reindeer and Ruby."

These vessels were rescued, as has been related, off Eastport. Mr. Jones, the prize-master, in his report of the affray, states that—

"It being fine weather, and they not being in want of wood or water, I detained the Reindeer and Ruby, and put their men, with the exception of the masters, on board the two American schooners, with provisions for a passage to Lubec, and made sail in the Reindeer and Ruby for St. Andrew's, through East Quoddy. About 6 p. m., when abreast of harbor De Lute, I observed two schooners, and an open boat full of armed men, muskets and fixed bayonets, hoisting American colors; one of them went alongside Mr. Towneau, in the Ruby, boarded, and took the arms from him and his three men: the one abreast of me was kept off for about a quarter of an hour, when they commenced firing into us. Though with great reluctance, I thought it most prudent to surrender to such superior force, having but four men, one musket, and three cutlasses.

"On delivering them up, I found there were in the two schooners about a hundred armed men, (including the crews of the schooners, about thirty in number,) the rest having the appearance of militiamen, and headed by a Mr. Howard, of Eastport, said to be captain in the United States militia."\*

The Magnolia was charged with fishing while at anchor in a harbor, but the master averred that he caught no fish within fifteen miles of the coast; that he went into the harbor for shelter, and for wood and water; and that his only offence consisted in the purchase of a barrel of herrings for bait. The Magnolia was, however, condemned.

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\* This statement we have shown to be incorrect in several particulars.



The Independence, on her way from the fishing ground to a colonial port to get a compass repaired, and to procure water, encountered a gale which required her to put into an intermediate harbor, where she lent her nets, for a single night, to a British fisherman, and was seized and confiscated.

The master of the Shetland, importuned by a lad, sold him a pair of trousers, one pound of tea, and six or eight pounds of tobacco, for which he received four dollars. The seizing officer himself confessed to the American consul at Halifax that he gave the boy the money to induce the master to sell the articles mentioned. The Shetland "escaped condemnation," says the consul, "by the merest accident;" she was released on payment of about six hundred dollars expenses.

The complaint against the Amazon was for selling goods on the coast. The charge was denied, and was not proved. She was restored on payment of \$138 88, as follows:

Captain TAYLOR, master of the schooner Amazon,		Dr.
To DUNCAN McMILLAN,		
1839. To sundry attendance on said vessel.....	£21 10 0	
James Turnbull's fees.....	1 3 4	
Mr. John Bullam's charges for wharfage, storage, &c.....	7 11 1	
Lauchlin McLean's bill for watching vessel.....	3 10 0	
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	34 14 5	

Captain Taylor deposed before the American consul at Pictou, that being reduced to the alternative of paying this enormous demand, or of "leaving his vessel in the hands of said McMillan, chose the former, and gave a draft on his owners for the amount; on which his vessel and stores were delivered to him by said McMillan, with the exception of a rifle and a musket, which the said officer took possession of, because "he thought they would get rusty on board the vessel, and he would take care of them; and they were not returned, \* \* although he demanded them from said McMillan. \* \* \* That the said vessel was detained in the possession of the said officer from the 7th day of July last until the 21st day of the present month, being forty-five days, which detention has ruined his voyage, deprived the owner of the power of procuring the bounty for the vessel for this season, and, together with the other heavy expenses incurred, \* \* the whole loss to the owners and crew of the said vessel, in consequence of such seizure, cannot amount to less than from two thousand to two thousand five hundred dollars."

The consul, in a communication to Mr. Forsyth, after the Amazon had proceeded to sea, remarked, that "the (as I apprehend it) unjustifiable detention of that vessel led not only to the destruction of her intended voyage, but, as I am informed, to her total loss in a gale on the coast of Cape Breton, soon after she was released."

The Charles, drifting from her anchorage under a fresh wind and heavy sea, (according to the account of her master,) put into a harbor for shelter, and was seized. The British minister at Washington, who considered that she was a lawful prize, alleges no offence, except that a ship-of-war found her "at anchor in Shelburne harbor, into which she had not been driven by stress of weather. From that harbor she had already sailed once, after having previously anchored there, and had

*returned a second time, before she was captured by the Argus,\* the weather being fine and moderate the whole time.* She was accordingly detained by Captain Arabin, for a breach of the act 59 George III, chapter 38, passed for the protection of the British fisheries, in conformity with the stipulations of the convention concluded between his Majesty and the United States on the 20th October, 1818. On the same grounds that vessel was subsequently condemned by the vice-admiralty court, at St. John, in the province of New Brunswick.

"With regard to the equipping of the said schooner by the captain of the Argus, and despatching her in quest of smugglers, you will observe, sir, that Admiral Fahie acknowledges that act to have been irregular; but he, at the same time, states that irregularity to have been practised then for the first time, and announces that he has taken measures for preventing the recurrence of it." But the Charles was condemned.

The Hart, while in a harbor for wood and water, assisted one Brown, a British subject, (as fishermen often do,) and was seized and condemned. Her master made oath that he had "never, at any one time, remained in any harbor or place for a longer period than twenty-four hours; that neither he nor his crew, since her departure from Deer island, have taken or prepared to take fish of any kind or description, with nets, lines, or in any manner, at a distance from the coast less than fifteen miles." And Brown deposed that the Hart had frequented the Tusket islands, "when, in his belief, shelter was necessary," that she "was always brought to anchor close to his own vessel;" that "he verily believed that no herring or other kinds of fish were taken by the crew within or near to the said islands;" that when at these islands, "had her crew attempted to fish, or to set nets, he must have been aware of it;" and that he gave the master, and one of the men, "two and a half barrels of herring as a recompense for assisting him, at his request, in picking herrings from his nets, and in dressing and salting fish."

The Eliza carried away one of her main chains, and put into a harbor to repair the damage; she was seized, but released on payment of a claim of three hundred and thirty-nine dollars and fifty-six cents, the amount of expenses incurred during her unlawful detention.

The Mayflower was carried into port, but finally restored on payment of a bill of three hundred and one dollars and twenty-five cents, "assessed" against her by her unjust captors; the agent preferring to liquidate the claim rather than to risk further difficulty.

The Three Brothers, relates Lieutenant Paine, in a letter to Mr. Forsyth, (1839,) "having met with some injury by grounding, commenced lightening; but the captain was advised to apply for permission, and did so: the permission was refused, and the articles landed (some barrels of salt) were seized. This was afterwards ordered to be restored to the owners, but had already been sold; and the proceeds are now in the hands of the collector of customs at Charlottetown, subject to the orders of the honorable the board of customs in London, and cannot be claimed by the owners without first entering into bonds—probably ten times the amount of the salt seized."

A second vessel, called the Charles, having fitted for the Magdalene herring fishery, (says the collector of the customs of the district of

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\* Formerly of the United States navy; captured in the war of 1812.



Frenchman's Bay, Maine, in a communication to Mr. Forsyth,) "after making her fare, on her return put into the harbor called Pirate Cove, near the Big Gut of Canso, and had not lain there twenty-two hours, when the schooner was boarded by an officer of the revenue, called a seizing officer, and by him taken possession of and carried to Guysborough. The only pretence for this seizure was, that the schooner was under cod-fishing license, and had on board herrings. The vessel, after a detention of nineteen days, was given up by directions from Halifax. That at the time of said seizure, the officer took from him ten barrels of his herrings, which have never been returned; and the remainder of his cargo, by the detention, has been nearly all lost. The name of the seizing officer was John G. Marshall." The master of the Charles, he adds, "is a very poor man, and totally unable to bear such a loss. It is at his request I write to solicit the aid of the government in his behalf, knowing of no manner in which he can obtain compensation for his losses from this British officer, but through his own government."

The allegation against the Pilgrim was that her lines were cast, and fish caught, within one and a half mile of the shore. After her capture, her master, assisted by one of the prize crew, rescued her. The Director and Pallas were seized for "aggressions," which do not distinctly appear in the official papers, and were "ultimately wholly lost to their owners," who claimed redress; but, as is believed, none was obtained.

The Java, the Hero, and the Combine, were probably condemned for good cause. With regard to the first, however, it may be said, that the American consul at Halifax, feeling a deep sympathy for her owners, gave directions for her purchase at the government sale, "if it was possible, by so doing, to save these poor men from ruin."

In the case of the Washington, there was no pretence whatever that she had committed any offence under the convention. When captured, she was ten miles from the coast; but being within the headlands of the Bay of Fundy, was made prize of, merely on the claim set up that we could not rightfully fish in the waters of that bay. The Argus was seized off the coast of Cape Breton, and fifteen miles from the shore, upon the same general ground. Her owners, in a letter to Mr. Calhoun, Secretary of State, says that she "had two hundred and fifty quintals of fish on board;" that "the vessel was valuable to them and to her crew, who were turned on shore without funds or means to help them home."

The Hope was captured without cause; was tried in the court of admiralty, and restored. Her master and crew had previously exerted themselves to save the lives of the crew of an English vessel.

The Commerce was seized in the Gulf of St. Lawrence. The captain states the facts as follows: "While employed," he says, in dressing the mackerel which they had caught (on that day,) "there came on a gale so severe that the vessel was hove down on her beam-ends; part of the fish, to the amount of fifteen barrels, was washed overboard, the rest being stowed in the hold; the only boat was carried away, and the gib was split in two." The next morning, being near the harbor of Port Hood, he thought "it prudent to put in to repair sails, and procure a boat. On arriving there he came to anchor, at 9 o'clock; and while salting the fish, to keep them from spoiling, and waiting for the sails to dry," the commander of a

colonial cutter came on board, from an old black fishing-shallop, with eleven men, and told him that he "had violated the treaty by salting his mackerel in the harbor." The colonial officer "put the men, except two, on shore, without money or friends, and took the vessel, with the captain and the two other men, to the Gut of Canso, where his cutter was lying, and on the following day to Arichat. The vessel was here stripped of her sails and rigging." On a hearing before the admiralty court, the Commerce was released; and, continues the captain, he "received an order, which was sealed up, addressed to the officer at Arichat, directing, as he was informed, the clearance of his vessel free of all expenses, and leaving him to get back as he could. On arriving at Arichat, he found one anchor taken from his vessel, and he was compelled to pay \$22 for wharfage, and for taking care of the vessel." The American consul for Cape Breton, Nova Scotia, and Newfoundland, corroborates the captain in the most important particulars. He remarks: "Off Prince Edward Island, one of our fishing-vessels lost her boat and injured her sails, and was obliged to put into Port Hood for a harbor. While there the captain was cleaning some of his mackerel, when his vessel was seized by the British revenue cutter and taken into Arichat, where the vessel was stripped of all her sails. As soon as I heard of the particulars from my consular agent at Port Hood, I immediately informed our government of the facts, and laid the case before the authorities at Halifax, who, after a delay of some three months, concluded to release the vessel; the consequence was, the owners were put to great expense, and the captain and crew, *many of whom had large families, lost their whole fishing season.*"

The number of our fishing vessels seized between 1818 and 1851 was fifty-one; of which, twenty-six were released without trial or by decree of the admiralty court, and twenty-five were condemned. The cases which we have examined embrace upwards of one-half of the whole number captured during a period of more than thirty years. Fifteen or sixteen thousand voyages, at the lowest computation, must have been made to the coast of Nova Scotia, New Brunswick, and Prince Edward Island; and yet, notwithstanding the hostile spirit which has been manifested by the first-named colony, from the first, and notwithstanding the inducements held out to the colonial officers by the provisions of the act of 1836, there have been barely fifty-one prizes. In view of this fact, the story of "American aggressions," with which the world has rung for upwards of a generation, becomes a mere fable.

Of the cases which we have noticed somewhat minutely, there is not one of a flagrant nature. Those of the Reindeer and Ruby are seemingly such; but whoever reads the statement of the British officer with care, will hardly find satisfactory proof, even by his own showing, that the muskets of which he speaks were fired from these very vessels, or that *they* were concerned in the outrages of which he complains. Certain it is, that the masters and owners, who were known to me, denied the allegations made against them; and that the injustice of the seizure, and the tardy redress to be obtained by an application to our government—as understood at the time—were the causes of the rescue.

The pretences upon which *some* of the twenty-eight vessels included in our examination were seized, are disgraceful beyond degree; and that of the number, several were condemned without the shadow of a



reason, beyond the poverty of the owners, the iniquitous provisions of the act of 1836, and the enormous expenses which attend litigation, cannot be doubted.

The American consul at Halifax, addressing the executive of Nova Scotia on the subject, observed to his Excellency, that "a claimant must be in a situation to procure funds to employ lawyers, and to pay heavy court expenses under the vice-admiralty table of fees; which cannot be done in any of these cases, as I am informed by professional men, under an advance of at least thirty or forty pounds currency: adding to this the security of sixty pounds, it is evident that the owner of each vessel so seized must either send on funds or letters of credit to the extent of one hundred pounds, before he can oppose the seizure, or, otherwise, the vessel will or may be condemned by default.

"This sum is, perhaps, as much as any of these small vessels are worth, and the claimant, if able to pay it, must actually place at hazard the one hundred pounds mentioned, in addition to his property seized; and although, perhaps, quite innocent of any offence, must depend upon the proverbial uncertainty of litigation for the recovery of any part of the property or money in such danger."

In a communication to the owners of the *Argus*, he says:

"The expenses in the court are very heavy, and previous to defending a suit, the judge requires security to the amount of three hundred dollars; so that, generally speaking, it is better to let the suit go by default, and purchase the vessel after condemnation."

Lieutenant Paine, previous to his cruise in the *Grampus*, entertained the opinion which has often been expressed during the disturbances of the present year, (1852,) that "the vessels seized had been generally guilty of systematic violation of the revenue laws;" but he confesses that he "was soon led to suspect that this was not the cause, so much as a pretence for seizing." And he states further, that "a vessel once seized must be condemned, unless released as a favor; because the owners will not claim her under the present laws of Nova Scotia, where the only seizures have taken place."

The consular agent of the United States for the port of Yarmouth, who is a legal gentleman, and a person of great private worth, gave the opinion, in the cases of the *Independence* and the *Hart*, that "the evidence was insufficient to authorize their seizure;" yet we have seen that both were confiscated. Mr. Barnes, the naval officer of Boston,\* in reply to the collector of that port, who desired information in relation to the seizures made in 1839, states, that "while at Yarmouth I had the pleasure of meeting very many highly respectable and intelligent gentlemen of that town, who seemed deeply to regret that their own government officers should have proceeded with so much rigor against the American fishing craft, believing with the consul and the Americans generally, that, in a majority of cases, the seizures had been made for causes of the most trivial character." He adds: "It is perfectly certain that our fishermen must have the right to resort to the shores of the British provinces for shelter in bad weather, for fuel, and for water, unmolested by British armed cruisers, or this important branch of American industry must be, to a very great extent, abandoned. It affords but poor consolation to the fisherman, whose

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\* In 1839.

vessel has been wantonly captured, and who finds himself and his friends on shore among foreigners already sufficiently prejudiced against him, without provisions and without money, to be told that the court of vice-admiralty will see that justice is done him, and that, if innocent, his vessel will be restored to him. The expenses of his defence and the loss of the fishing season are his ruin."

The officer who for many years made the greatest number of captures died in 1851. It was the opinion of Lieutenant Paine, in 1839, that he was "prompted as well by his interest as by the certainty of impunity" in his course towards our countrymen. We may now pass lightly over his proceedings, remarking only that, the year previous to his decease, he levied contributions upon some of the masters of fishing vessels he met with, compelling them to give him five, ten, or twenty barrels of mackerel, according to circumstances, on pain of capture for refusal.\*

To avoid misapprehension, I deem it proper to observe, in conclusion, that I have not designed to censure the admiralty court. As long ago as the war of 1812, that tribunal restored to the Academy of Arts of Philadelphia a case of Italian paintings and prints captured by a British vessel and sent into Halifax, on the ground that "the arts and sciences were admitted to form an exception to the severe rights of warfare." It has lost none of its character since. Its decisions rest on the law and the testimony. Still, since integrity and learning upon the bench are insufficient to insure justice without honest witnesses upon the stand, American vessels have sometimes been condemned wrongfully.

The discussion may end here. The political leaders of Nova Scotia have succeeded in disturbing the friendly relations which for a long period existed between England and the United States. "We have been on the verge of a war," says the London Times, "with a nation which, from its identity in race and language with ourselves, would have proved a truly formidable enemy—a maritime and commercial people, who would have met us with our own arms, on our own element, and visited our commerce with mischiefs similar to those which we should have inflicted upon theirs. *So closely are the two countries united, that every injury we might inflict on our enemy would have been almost as injurious to our merchants as bombarding our towns or sinking our own ships.*" And it continues: "It is no exaggeration to say that with this people we were on the very verge of war; for, had we persevered in carrying out with a high hand, by seizure and confiscation, our own interpretation of the treaty, a collision with the American commodore† was unavoidable; and such a collision must almost necessarily have been followed by a formal declaration of hostilities. Now, what is the question which has so nearly led to such serious results? It is simply whether a certain quantity of salt-fish consumed in these islands shall be caught by citizens of the United States or natives of our own colonies. *The question whether American fishermen shall be allowed to spread their nets in the Bay of*

\* There seems no reason to doubt this statement, which rests on the declarations of the persons concerned. It is said, further, that this officer dared not to dispose of the fish after he had obtained them, and that they were suffered to remain in store a long time. Representations on the subject were made to Mr. Webster, Secretary of State, in March, 1852.

† Commodore Perry, in the steamer *Mississippi*.



*Fundy is one in which the people of this country have no imaginable interest: they will neither be richer nor poorer, stronger nor weaker, more admired nor more feared, should they secure the monopoly of fishing in these northern waters to the inhabitants of the seacoast of our North American colonies."*

These are significant declarations. Still further, says this powerful press: "We are, in fact, in this disagreeable position, that, according to the present compact between the mother country and her colonies, *she is obliged to take up quarrels in which her interests are in no way involved, and is bound over as surety for the good behavior of governments and legislatures actuated by feelings, principles, and interests totally different from her own, and over whose actions she has renounced all efficient control.*"

It is precisely so; and the London Times might have spoken of one of these colonies as did Mr. Burke.\* "The province of Nova Scotia," said he, "is the youngest and favorite child of the board.† *Good God! what sums the nursing of that ill-thriven, hard-visaged, and ill-favored brat has cost this wittol‡ nation! Sir, this colony has stood us in a sum not less than seven hundred thousand pounds. To this day, it has made no repayment: it does not even support those offices of expense which are miscalled its government. The whole of that job still lies upon the patient, callous shoulders of the people of England.*"

I have not designed, in the strictures which have appeared in this paper, to include the great mass of the people of Nova Scotia. Terms of severity, whenever found, have been designed entirely for the busy, restless politicians of that colony, who originally stirred up, and have kept alive, the existing strife. The people, as a body, I am persuaded, entertain no feelings of hostility towards us. If allowed, *they* would afford us all possible aid in conducting our enterprises in their waters, and would deal with us in the most neighborly and liberal manner. *They* are willing to admit that there are fish enough both for themselves and for us. We are to spare our censures of colonial fishermen, then, and to speak harshly of the political men alone who, for purposes of their own, have conceived plans which, if executed, will do vast injury to us, and ultimately to the colonists themselves; for it is not to be overlooked that retaliatory legislation on the part of Congress would utterly ruin the colonial fisheries.

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\* Speech on economical reform, House of Commons, February 11, 1780.

† Board of Trade and Plantations.

‡ Witol, wittal, or wittol: an old Saxon word, signifying a contented cuckold.

EXTRACTS FROM REVISED STATUTES OF THE UNITED STATES,  
TITLES XLVIII AND L, CHAP. I.

SEC. 4131. Vessels registered pursuant to law, and no others, except such as shall be duly qualified, according to law, for carrying on the coasting trade and fisheries, or one of them, shall be deemed vessels of the United States, and entitled to the benefits and privileges appertaining to such vessels; but they shall not enjoy the same longer than they shall continue to be wholly owned by citizens and to be commanded by a citizen of the United States. And officers of vessels of the United States shall in all cases be citizens of the United States.<sup>a</sup>

(31 Dec., 1792, c. 1, s. 1, v. 1, p. 287. *Ibid.* 17 April, 1874, c. 107, v. 18, p. 30. 18 April, 1874, c. 110, v. 18, p. 31.)

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SEC. 4165. No vessel which is registered, pursuant to any law of the United States, and which is seized or captured and condemned under the authority of any foreign power, or which by sale becomes the property of a foreigner, shall be entitled to or capable of receiving a new register, notwithstanding such vessel should afterward become American property; but all such vessels shall be taken and considered, to all intents and purposes, as foreign vessels. Nothing in this section shall extend to or be construed to affect the person owning any vessel at the time of the seizure or capture of the same, or his executor or administrator, or shall prevent such owner or his executor or administrator, in case he regain a property in such vessel, so condemned, by purchase or otherwise, from claiming and receiving a new register for the same, as he otherwise might have done.<sup>b</sup>

(27 June, 1797, c. 5, v. 1, p. 523. 27 Mar., 1804, c. 52, s. 2, v. 2, p. 297.)

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SEC. 4320. In order to the licensing of any vessel for carrying on the coasting-trade or fisheries, the husband, or managing owner, together with the master thereof, with one or more sureties to the satisfaction of the collector granting the same, shall become bound to pay to the United States, if such vessel be of the burden of five tons and less than twenty tons, the sum of one hundred dollars; and if twenty tons and not exceeding thirty tons, the sum of two hundred dollars; and if above thirty tons and not exceeding sixty tons, the sum of five hundred dollars; and if above sixty tons, the sum of one thousand dollars, in case it shall appear, within two years from the date of the bond, that such vessel has been employed in any trade whereby the revenue of the United States has been defrauded, during the time the

<sup>a</sup> For this section as amended by Act of Congress of May 28, 1896, see p. 1126.

<sup>b</sup> For this section as amended by Act of Congress of March 3, 1897, see p. 1127.



license granted to such vessel remained in force. The master of such vessel shall also swear that he is a citizen of the United States, and that such license shall not be used for any other vessel or any other employment than that for which it is specially granted, or in any trade or business whereby the revenue of the United States may be defrauded; and if such vessel be less than twenty tons burden, the husband or managing owner shall swear that she is wholly the property of citizens of the United States; whereupon it shall be the duty of the collector of the district comprehending the port whereto such vessel may belong, [*the duty of six cents per ton being first paid,*] to grant a license.<sup>a</sup>

(18 Feb., 1793, c. 8, s. 4, v. 1, p. 306. 27 Feb., 1877, c. 69, v. 19, p. 251.)

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*Mr. Reynolds to the Secretary of State.*

TREASURY DEPARTMENT,  
WASHINGTON, September 18, 1909.

The honorable the SECRETARY OF STATE.

SIR: In response to your inquiry, I have the honor to inform you that under the Statutes of the United States and the rulings of this Department no duty is imposed upon the entry into this country of fish taken in foreign waters by American fishing vessels, with the assistance of foreign fishermen, boats and gear hired for that purpose, provided that no portion of the cargo was in fact purchased, fish thus taken being the "product of American fisheries" within the meaning of the Statutes authorizing the free admission into this country of such products.

Under the rulings of this Department "an American fishery" is "a fishery prosecuted under the American flag."

Fish thus taken in Newfoundland and other waters under treaty rights by American fishing vessels, have always been considered as the product of an American fishery.

Respectfully,

(Signed)

J. B. REYNOLDS,  
*Acting Secretary.*

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<sup>a</sup> For this section as amended by Act of Congress of January 16, 1895, see p. 1129.

# EXTRACTS FROM ANNUAL REPORTS OF CANADIAN DEPARTMENT OF MARINE AND FISHERIES.

List of United States vessels reported as having taken out annual licenses:

Year.	No. of vessels.	Year.	No. of vessels.
1888-----	36	1898-----	79
1889-----	78	1899-----	80
1890-----	119	1900-----	78
1891-----	98	1901-----	82
1892-----	108	1902-----	89
1893-----	71	1903-----	93
1894-----	53	1904-----	80
1895-----	47	1905-----	107
1896-----	77	1906-----	no report.
1897-----	40		

## EXTRACTS FROM ANNUAL REPORTS.

### *Report for 1889.*

The service during the past season has been carried on most satisfactorily, there being an evident desire on the part of United States fishing vessels to fairly observe the regulations, and friction between the masters and the officers of the Protection Force has been avoided, while the existence of the so called *modus vivendi* license system has been an important factor in the maintenance of order and goodwill. The licenses issued numbered 78, as against 36 in 1888; the amount collected being \$9,589.50, as against \$3,831.00 in 1888, an increase of 42 licenses and \$5,758.50 in collections in 1889 over the previous year.

As the two years for which the *modus vivendi* made provision in connection with the granting of these licenses expires on the 15th of February of next year, unless some new arrangement is reached or provision made for continuing the present system, recourse will be necessary to the much discussed provisions of the Treaty of 1818.

The only seizure made during the year was that of the United States' fishing schooner *Mattie Winship*, Captain Conrad W. Ericson, 73 tons, of Gloucester, Mass., seized by Captain Knowlton, of the *Vigilant*, for illegally fishing off the North Cape coast of Victoria County on the 31st May, 1889. This vessel was released under bond, and subsequently discharged upon the payment to the Crown of a fine of \$2,000 and all expenses.

In the month of November judgment was given by the Vice Admiralty Court of Nova Scotia in the case of the schooner *David J. Adams*, seized in 1886 for preparing to fish in the offing near Digby, N. S., decreeing the vessel's forfeiture and ordering that she be disposed of by public auction. This was done after due notice, when the vessel sold for the sum of \$1,400.



*Report for 1890.*

The only seizure effected during the past season was the United States' fishing schooner *Davy Crockett*, Nelson Cantello, Master, which vessel was seized at Souris, P. E. I., on the 25th September, for fishing from dories within the three-mile limit. The *Davy Crockett* was taken to Charlottetown and proceedings instituted in the Admiralty Court. Pending the result of these proceedings, this vessel was released under a bond for \$2,500, this having been furnished to the satisfaction of the court.

The United States' fishing schooner *Nellie Irving* was detained by the Collector at Souris for an alleged infraction of the Customs regulations, but was subsequently released.

The period of two years for which the *modus vivendi* of the Treaty of Washington Act of 1888, providing for the issue of licenses to United States fishing vessels, having expired on the 14th of February, 1890, Parliament passed an Act intitled "An Act respecting fishing vessels of the United States of America," under which the system of licenses to foreign fishing vessels was authorized, the conditions being that upon the payment of \$1.50 per ton such vessels were permitted to enter Canadian ports for the purchase of bait, ice, seines, lines, and all other supplies and outfits, and the transmission of catch and shipping of crews.

*Report for 1891.*

During the past season, but one seizure of United States vessels became necessary; that of the schooner *F. D. Hodgkins*, which was seized at Fox Bay, Anticosti, by the SS *La Canadienne*, for fishing within the three-mile limit.

The vessel was taken to Gaspé, and proceedings were instituted in the Admiralty Court, but on the urgent plea of the master that he was ignorant of the law, thinking they had the same right at Anticosti as at the Magdalen Islands, and that his action was not a wilful violation of the law, the vessel was released on the payment of a fine of two thousand dollars.

The Act of 1890, providing for the issue of licenses to United States fishing vessels, having expired on the 31st December of that year, and in view of the late date of the meeting of Parliament, authority was obtained from His Excellency in Council to issue *ad interim* receipts for similar privileges on the same conditions, pending legislative action in that direction; such receipts to be replaced by formal licenses on the passage of the requisite statute.

On the 10th July, 1891, an Act was assented to providing for the issue of licenses to United States fishing vessels, permitting them during the calendar year to enter ports on the Atlantic Coast of the Dominion of Canada, for the purpose of:—

(a) The purchase of bait, ice, seines, lines and all other supplies and outfits:

(b) The transshipment of catch, and the shipping of crews.

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It is noticeable that although United States vessels were enabled to obtain licenses free of charge from Newfoundland for the purpose of procuring fresh bait, and the above figures show a decrease of 21

in the number of vessels which took out such licenses in 1891 as compared with 1890, there is an actual increase of 20 vessels over 1889, when the licenses issued by Newfoundland and Canada on the same terms were jointly valid in the Dominion and Newfoundland respectively.

#### LICENSES FOR FOREIGN FISHING VESSELS.

Parliament having sanctioned the continuance of the system of the issue of licenses commenced under the *modus vivendi* appended to the Treaty of Washington, 1888, similar licenses were issued for the year 1891, and the charge of one dollar and fifty cents per ton formerly made was continued unchanged.

#### *Report for 1893.*

##### SEIZURES.

Two seizures were made during the season, one of the *Lawrence A. Munro*, U. S. fishing schooner, seized at the Magdalen Islands for the infraction of the customs laws. This vessel was taken to Gaspé, but was released on the payment of a fine of \$1,200 after a short period; and the *Lewis H. Giles*, U. S. schooner, seized off Cape Egmont, east coast, Cape Breton, by Captain Knowlton, in the Dominion cruiser *Vigilant*. This vessel was fishing inside the three-mile limit, the master pleaded he was not inside, but the vessel was taken to Sydney and partially dismantled; she was released on payment of a fine of \$2,500.

#### *Report for 1894.*

Two seizures were made on the Atlantic coast, viz., the United States schooner *H. L. Phillips* for fishing inside the limits at Anticosti. This case is still pending in the Admiralty Court. The Schooner *Mabel R. Bennet* was seized for curing fish inside our limits, but was released on taking out a license.

#### *Report for 1895.*

It will be of interest to give the history of these *modus vivendi* licenses issued to United States fishing vessels. As I have remarked in a previous report, the issue of these licenses simply shows our good feeling towards the United States, and from a fisherman's point of view, is very much in favour of our neighbours.

Under the *modus vivendi* which forms a protocol to the treaty of 1888, pending ratification, the British plenipotentiaries agreed to a temporary arrangement, not exceeding two years, by which United States fishing vessels, on payment of the sum of \$1.50 per ton register, were allowed the privileges of—

- (1) The purchase of bait, ice, seines, and all other supplies.
- (2) Shipping crews, and transshipping catch.

If, during these two years, the United States should remove the duties on fish and fish products, these licenses should be issued free. The United States Government made no such concession. During 1888 and 1889, the two years specified, it was practically obligatory for the Canadian Government to issue these licenses, but not so after 1889.



In 1890, Canada, by Act of Parliament, extended the privileges which had expired with the *modus vivendi*. This was continued until 1893, when to avoid going to Parliament, an Act was passed authorizing the government to issue such licenses from time to time.

### *Report for 1896.*

#### SEIZURES.

The only seizure of a United States fishing vessel made during the season was that of the schooner *Frederick Gerrig Junior*. She was seized within one and one-half miles of Gull Ledge, off the coast of Guysborough, Nova Scotia, on the 25th May, by Captain Knowlton, for bailing mackerel out of a seine inside the limits. The master pleaded that the fish were caught outside, and if she was inside at the time of seizure, she had drifted in, and that the act of fishing was finished when the fish were once inclosed in the seine. The case was tried in the Admiralty Court of Nova Scotia before the Chief Justice, and the vessel was condemned and confiscated. However, the defendants appealed to the Supreme Court at the capital. The case was heard, but judgment has been reserved.

#### LICENSES FOR FOREIGN FISHING VESSELS.

An Order in Council being passed sanctioning the continuance of the system of the issue of licenses commenced under the *modus vivendi* appended to the Treaty of Washington, 1888, similar licenses were again issued for 1896, and the charge of \$1.50 per ton formerly made was continued.

### *Report for 1897.*

It will be noticed that there has been a falling off in the licenses taken out by United States fishermen this year. The reason, I think, is the great leniency with which the department has treated these fishermen, in many cases privileges being granted which really necessitated the taking out of a license, so, of course, in the natural order of events, owners would not pay for a privilege (although it is only a nominal fee), when they could get the same thing without paying. Those who did take out and pay for licenses were much exercised over the same right being accorded to people who paid nothing.

During 1896 the number of licenses increased nearly 60 per cent on account of the extra paragraph which was placed in the license warning United States fishermen with a license that if they sold stores of any description to vessels without such license, immediate cancellation of the permit would ensue, and no license would be issued to the offending vessel in the future. The invariable conciliatory attitude of the Canadian Government for years to foreign fishermen I think is taking effect now, and it will probably be found that the licenses will become fewer.

### *Report for 1898.*

It will be noticed that there are nearly double as many licenses as in 1897. I put this down to the scarcity of bait on the United States coasts; there is no doubt in my mind that the procuring of bait and

shipping of men are by far the most important items included in the licenses, after that the transshipment of cargo. As regards buying provisions, stores, &c., I think it would greatly assist our merchants and others in the small coast towns if this were to be allowed. However, no doubt all these highly important details are being taken into consideration by the Joint High Commissioners.

*Report for 1899.*

SEIZURES.

One seizure was made, by Captain Knowlton of the *Osprey*, at Canso, Nova Scotia, for an infraction of the fishery laws, in that the United States fishing vessel, *Flora L. Nickerson*, did purchase provisions and stores at Canso without first obtaining a Dominion license. This vessel was seized and a guard put on board, but I released her next day on orders from the department, after the master had consented to immediately secure a *modus vivendi* license.

Another seizure of the United States fishing vessel *Stranger* was made at Lockeport, Nova Scotia; but this was purely for a customs matter. She was released on payment of a fine of twenty-five dollars.



## GEOGRAPHICAL DATA.

*Annapolis Basin*, Lat.  $44^{\circ} 40' N.$ , Long.  $65^{\circ} 42' W.$  The entrance is through *Digby Gut* which is not over one-half mile<sup>a</sup> wide.

*American Cove* is stated to be in *Whitehead Harbor*. (See *Gull Cove*.)

*Beaver Island*, Lat.  $44^{\circ} 49\frac{1}{2}' N.$ , Long.  $62^{\circ} 20\frac{1}{2}' W.$  The island is about one-half mile long. It is now marked by a light-house.

*Beaver Harbor*, Lat.  $44^{\circ} 55' N.$ , Long.  $62^{\circ} 20\frac{1}{2}' W.$  The harbor is about 3 miles deep and 3 miles wide at the entrance.

*Bryer (Briar) Island*, Lat.  $44^{\circ} 16' N.$ , Long.  $66^{\circ} 22' W.$

*Cape Negro Harbor*, Lat.  $43^{\circ} 32' N.$ , Long.  $65^{\circ} 21' W.$  Each of the two entrances to the harbor are less than 1 mile wide.

*Cheticamp Point*, Lat.  $46^{\circ} 36' N.$ , Long.  $61^{\circ} 3' W.$  (See *Friar Head*.)

*Digby Harbor*.—The town of Digby is located on the south side of *Annapolis Basin* (which see).

*Ellenwood Harbor* is stated to be in *Tusket Islands* (which see).

*Friar Head*, Lat.  $46^{\circ} 31\frac{1}{2}' N.$ , Long.  $61^{\circ} 5' W.$  A line drawn from *Cheticamp Point* to *Margaree* (or *Sea Wolf*) *Island* would pass within less than two miles of *Friar Head*. At no point would such line be more than three miles from land.

*Gulliver's Hole*, Lat.  $44^{\circ} 37' N.$ , Long.  $65^{\circ} 55\frac{1}{2}' W.$  A small bay about  $\frac{3}{4}$  mile deep and about  $\frac{3}{4}$  mile wide at the entrance.

*Gull Cove*, Lat.  $44^{\circ} 39' N.$ , Long.  $66^{\circ} 42' W.$  A small bay on *Whitehead Island*, S. E. of *Grand Manan Island*.

*Guysborough Harbor*, Lat.  $45^{\circ} 25' N.$ , Long.  $61^{\circ} 30' W.$  The harbor is long and narrow, about 8 miles deep and from  $\frac{1}{2}$  to  $\frac{3}{4}$  of mile wide.

*Liscomb Harbor*, Lat.  $45^{\circ} N.$ , Long.  $62^{\circ} W.$  The entrance to the harbor is not over a mile wide.

*Margaree (Margurite) Island*, Lat.  $46^{\circ} 22' N.$ , Long.  $61^{\circ} 16' W.$  This is the same as *Sea Wolf Island*, so named on British Admiralty Chart, 1847–1857, (Gulf of St. Lawrence, sheet X, No. 2727). In the account of the seizure of *Egret* and *Mars*, September 5, 1841, by United States Consul (*ante*, p. 468), it is called *Sea Wolf Island*, and in the data contained in the report of the Registrar of the Vice Admiralty Court at Halifax in 1852 (*ante*, p. 1078), it is called *Margaree Island*.

*Mabou (Cape or River)*:

*Cape Mabou*, Lat.  $46^{\circ} 9' N.$ , Long.  $61^{\circ} 27' W.$

*Mabou River*, Lat.  $46^{\circ} 5' N.$ , Long.  $61^{\circ} 29' W.$

*Pope's Harbor*, Lat.  $44^{\circ} 48' N.$ , Long.  $62^{\circ} 39' W.$  The entrance to the harbor is about  $1\frac{1}{4}$  miles.

*Port Hood Harbor*, Lat.  $46^{\circ} N.$ , Long.  $61^{\circ} 32' W.$  The harbor is formed by *Smith Island* extending parallel with the mainland for a distance of about  $2\frac{1}{2}$  miles; the width of the harbor is from  $\frac{3}{4}$  to  $1\frac{1}{2}$  miles.

*Ragged Island (Harbor)*, Lat.  $43^{\circ} 42' N.$ , Long.  $65^{\circ} 6' W.$  The widest entrance to the harbor is less than 2 miles wide.

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<sup>a</sup> Where the word, "mile" is used, it should always be understood to mean the marine mile.

St. Ann Bay, Lat.  $46^{\circ} 20' N.$ , Long.  $60^{\circ} 25' W.$

Sandy Cove, Lat.  $44^{\circ} 30' N.$ , Long.  $66^{\circ} 6' W.$

Sea Wolf Island is the same as Margaree Island (which see).

Shelburne Harbor, Lat.  $43^{\circ} 42' N.$ , Long.  $65^{\circ} 20' W.$  The harbor is about 7 miles deep. Its entrances are about 1 mile wide.

Smoke, Cape, Lat.  $46^{\circ} 47' N.$ , Long.  $60^{\circ} 21' W.$

Trout Cove, Lat.  $44^{\circ} 33' N.$ , Long.  $66^{\circ} 2' W.$  A very small bay, less than  $\frac{1}{2}$  mile wide.

Two Island Harbor is stated to be on Grand Manan Island.

Turney's Cove is stated to be in the Gut of Canso.

Tusket Islands, Lat.  $43^{\circ} 36\frac{1}{2}' N.$ , Long.  $66^{\circ} 4' W.$

Whitehead Harbor (see Gull Cove).

The foregoing data is obtained from the British Admiralty Charts listed below.

*List of Charts Published at the British Admiralty.*

Chart  
Number.

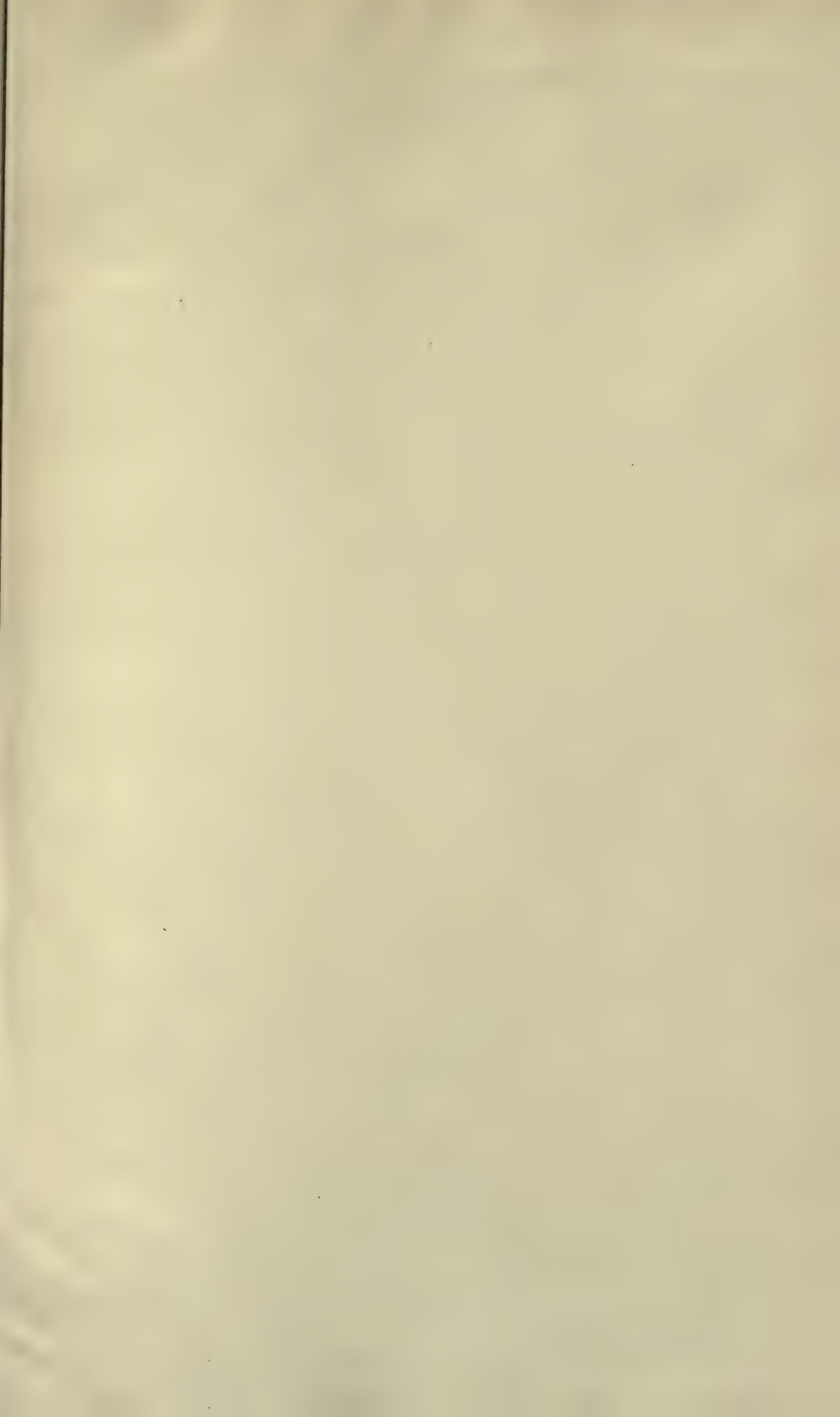
- 352. NORTH AMERICA. *East Coast.* Sheet 1. Bay of Fundy.
- 353. NORTH AMERICA. *East Coast.* Sheet 2. Bay of Fundy.
- 729. NOVA SCOTIA. *S. E. Coast.* Sambro I. to C. Canso.
- 730. NOVA SCOTIA. *S. E. Coast.* C. Sable to Sambro I.
- 2727. THE GULF OF ST. LAWRENCE, *Sheet X.* Cape Breton Island.
- 1651. NORTH AMERICA. *East Coast.* Nova Scotia, Prince Edward I. and part of New Brunswick.
- 2034. NORTH AMERICA. *East Coast.* *Gulf of St. Lawrence.* North-umberland Strait.
- 1134. GULF OF ST. LAWRENCE. Magdalen Islands.
- 1715. GULF OF ST. LAWRENCE. Chaleur Bay.
- 1621. NORTH AMERICA. *East Coast.* Canada. Entrance to the River St. Lawrence.
- 305. LABRADOR. *South Coast.* Gulf of St. Lawrence. Great Me-cattina I. to Pashasheeboo Point.
- 1422. NORTH AMERICA. *East Coast.* Labrador.
- 284. NORTH AMERICA. *Gulf of St. Lawrence.* Coasts of New-foundland and Lower Canada. Cow Head Harbour to Ste. Genevieve Bay, with the Canadian and Labrador coasts be-tween Great Mekattina Island and Amour Pt.
- 232a. NEWFOUNDLAND. *Southern Portion.*
- 232b. NEWFOUNDLAND. *Northern Portion.*
- 290. NEWFOUNDLAND. *South Coast.* Placentia to Burin Harbour.
- 893. NEWFOUNDLAND. *South Coast.* Burin Harbour to Devil Bay, including Miquelon Islands and Fortune Bay.
- 2141. NEWFOUNDLAND. *South Coast.* Richards Hr. to Ramea Is.
- 2142. NEWFOUNDLAND. *South Coast.* Ramea Is. to Indian Hr.
- 2143. NEWFOUNDLAND. *South West Coast.* Indian Harbour to Cape Ray.
- 283. NEWFOUNDLAND. *West Coast.* Codroy Road to Cow Head Harbour.
- 285. NEWFOUNDLAND. *East Coast.* Orange Bay to Gander Bay, including Notre Dame and White Bays.
- 293. NEWFOUNDLAND. *East Coast* from Trinity Harbour to Cape Freels.
- 296. NEWFOUNDLAND. *East Coast.* Cape Bonavista to Cape Bulls including Trinity and Conception Bays.

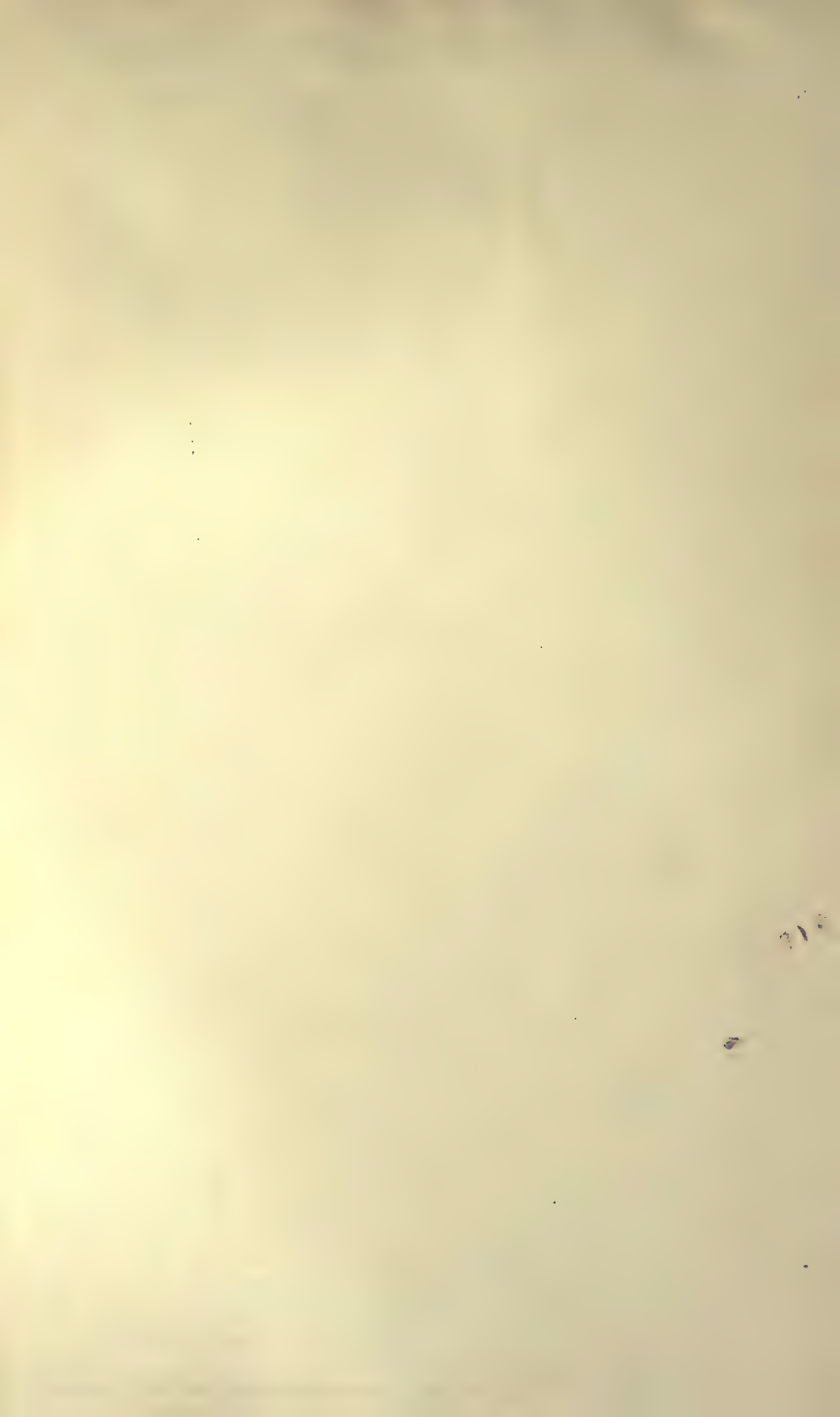






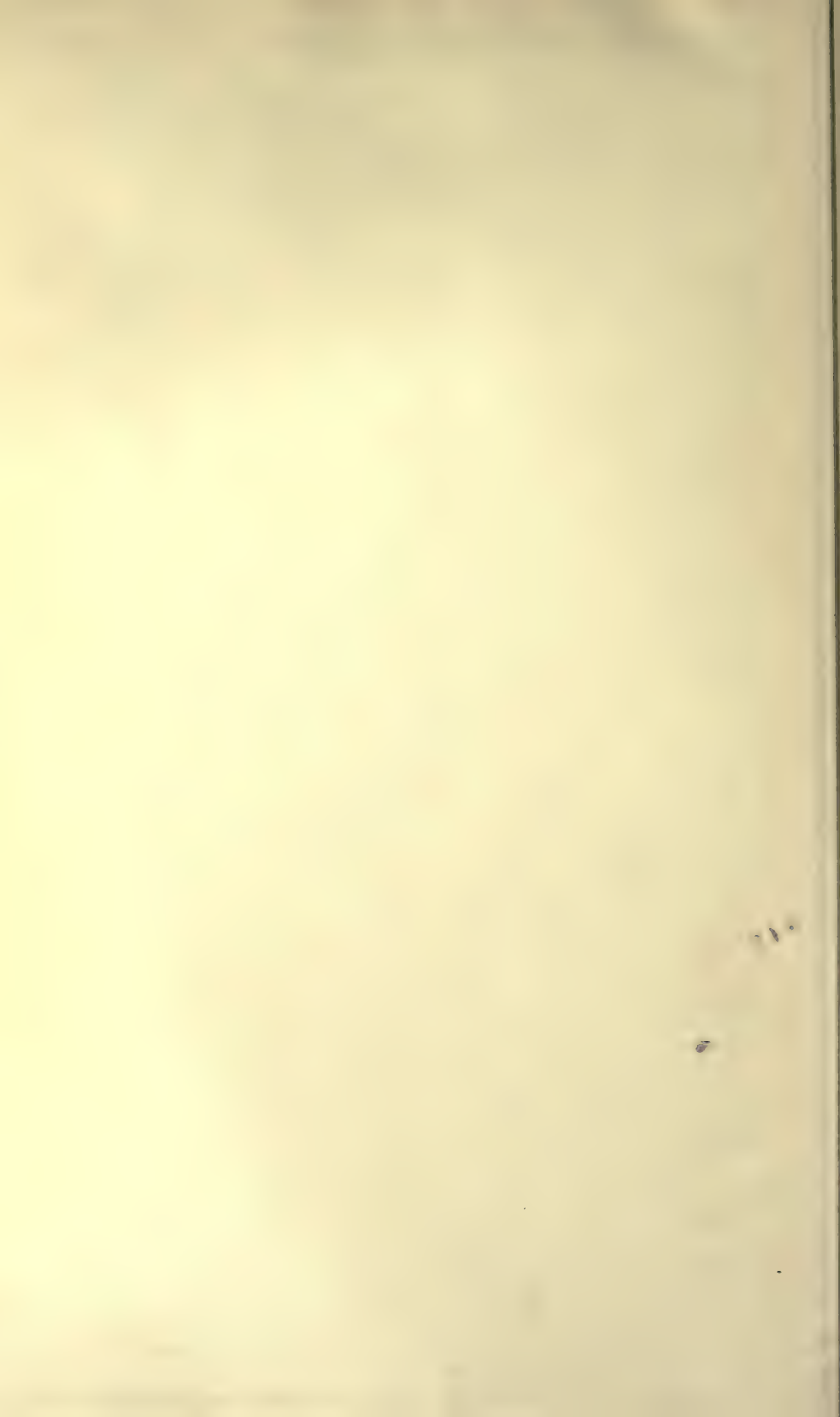




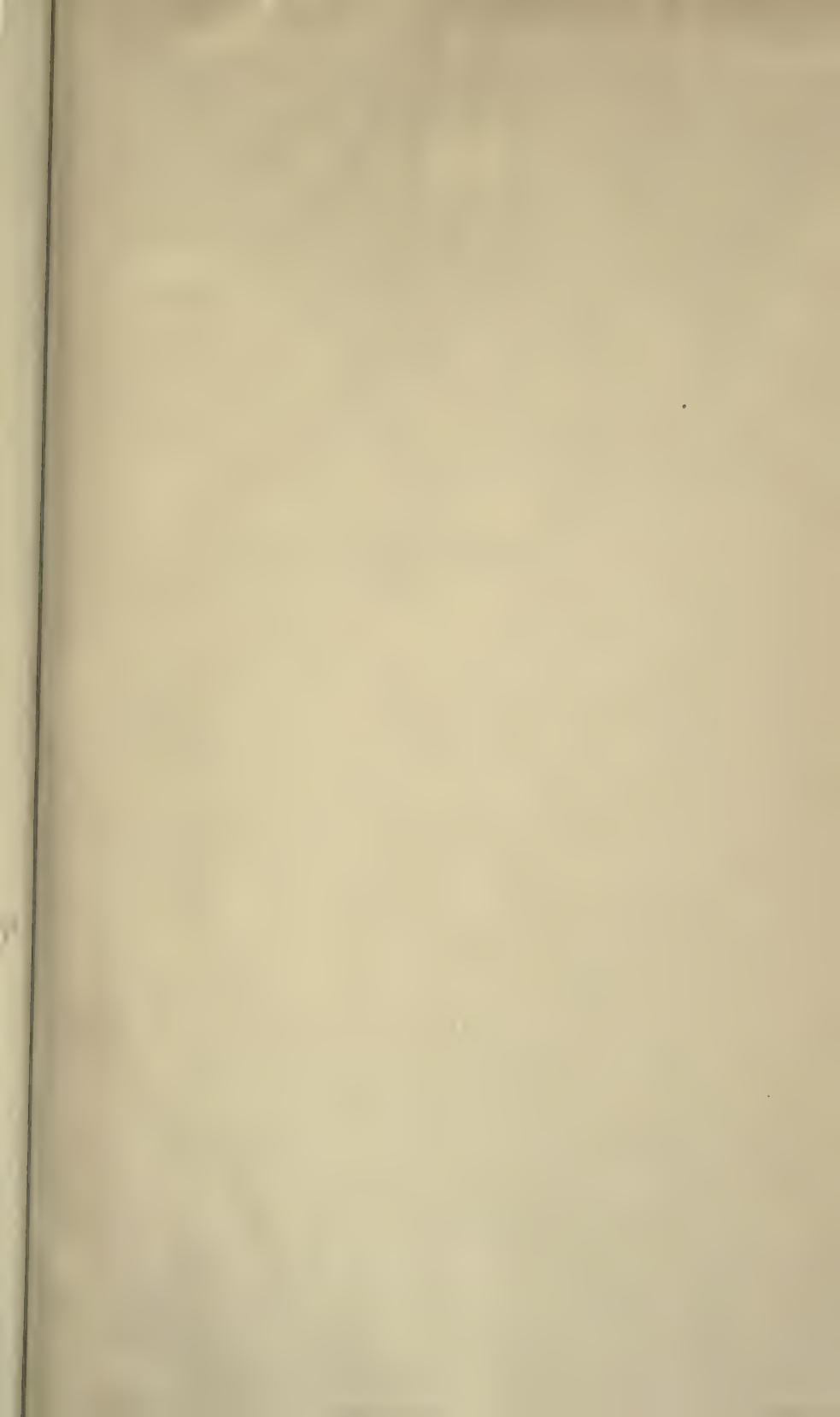






















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